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FOUNDATIONS OF AMERICAN CONSERVATISM

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To the student of comparative political theory, few things are more fascinating than the contrast not only between different ages but also between different countries in one and the same age. The greatest advances in the collective thinking of Western humanity have been made coöperatively by men of every nation; and in every age all unite to give to that age its own distinctive character; yet each people contributes something of its own national genius to the spirit of the age. He, then, who would understand a country and the pattern of its people's thinking does well to inquire in what way it has deviated from the thinking of other nations in particular epochs.

Whoever looks at early nineteenth-century America must be struck by its aloofness from many of the main currents of Western thinking. In the great Revolution of the eighteenth century, it had not been thus. The Lockean and Blackstonean tradition of the right of Englishmen to protect their property through representative organs; Rousseau's concept of equal natural rights of every individual and the right of the sovereign people in convention to reconstitute society according to its general will; Montesquieu's advocacy of checks and balances as safeguards of liberty; Quesnay's physiocratic cult of land as the natural source of wealth and power; Adam Smith's analysis of the relationship between national policy and private commerce; deism in religion; and associationism in psychology—these were among the many trends in the Age of Reason that came to a focus in the revolt of the thirteen colonies and the establishment of the United States. And, coming to a focus here, they helped precipitate further developments of political thinking in the Old World, including Condorcet's cult of equality

and the British philosophical radicals' program of annual elections and universal suffrage. In that formative age, the United States not only shared but also helped to lead in the search for new ways in which authority might be based on rational consent.

In the nineteenth century, all was different. The United States turned inward from the Atlantic to the Mississippi prairies; and its theorizing became insular, isolationist, nativist. From the main currents of the age, it could not be wholly exempt; but here they flowed through side channels and back bays, taking on a character of their own, and never exposing the American people to the full force of the tides that were remaking Europe's thinking. Here was an essential phase in the making of America, the nation. America was different. It was almost as though its political thinking had become set in eighteenth-century molds—as though the new nation acquired at its conception a political mentality that it would never, or only slowly, outgrow. American political theorists and thinkers of the two generations 1783–1861 tended thus to be characteristic of America rather than of their age.[1]

In the early nineteenth century, two currents were flowing strong among other English-speaking peoples: the currents that go under the names of Bentham and Burke. Yet by both currents America went uninfluenced and unaffected.

Bentham's utilitarianism did more than any other single factor to remodel British governmental and juridical structure, so that it became possible to write the history of nineteenth-century Britain in terms of Benthamism.[2] And in the French-speaking countries of the European continent, the influence of utilitarianism was hardly less pervasive than in Britain.[3] Yet in the United States it made no headway whatever.[4] American democrats and liberals pre-

[1] This has previously been suggested in W. S. Carpenter, *Development of American Political Thought* (1930), without, however, stressing the ambivalence or dialectic inherent in American political thinking, which provided the theme of V. L. Parrington's illuminating and suggestive *Main Currents in American Thought* (1927, etc.).

[2] As has been done in A. V. Dicey, *Law and Public Opinion* (lectures 1898; pub. 1905); G. Wallas, *Francis Place* (1898); and E. Halévy, *Formation du Radicalisme Philosophique* (1901, etc.) and *Histoire du Peuple Anglais* (1912, etc.).

[3] See the writings of Étienne Dumont, and, on the origins of utilitarianism, W. H. Wickwar, *Baron d'Holbach* (1935).

[4] In spite of some early references to the "greatest happiness of the greatest number" by John Adams and Fisher Ames:
"There is in nature, and there must be in the administration of government, a fixed rule and standard of political conduct, and that is, the greatest permanent happiness

ferred natural rights and terminable contracts to the greatest happiness of the greatest number; or perhaps they did not know the difference.[5] Nor was this failure of Benthamism to make a home in America a merely theoretic loss; the present-day need for reforming the administration of justice points to a nineteenth-century omission that would have been unthinkable in any land dominated by utilitarian legal thinking.[6]

Burke's conservative evolutionism was no less important; and it had many Continental counterparts, such as the work of Chateaubriand in France, Maistre in Savoy, and Haller in Switzerland. Everywhere they denied the right of an adventitious majority in a passing generation to overthrow the social constitution inherited from their ancestors. In hallowed sentiments and customary loyalties, they found the only solid alternative to coercion, as a foundation for authority and a guarantee of inherited liberties. In experience and custom, rather than in reason, they found a basis for the interdependence of men in society.

America also had conservatives and therefore had a similar need of conservative theorists. Yet Burke, Chateaubriand, Maistre, and Haller had no American counterparts. Nowhere in the United States in that age does there seem to have been any thoroughgoing exponent of organic social growth—anyone who consistently applied an evolutionary line of thinking to problems of political obligation and social reform, as was normal in Europe for two generations before Darwin.[7]

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of the greatest number of the people." F. Ames, "Camillus" (1787), in *Works*, II 108 (Boston, 1854).

"Upon this point all speculative politicians will agree, that the happiness of society is the end of government, as all divines and moral philosophers will agree that the happiness of the individual is the end of man. From this principle it will follow that the form of government which communicates ease, comfort, security, or, in one word, happiness, to the greatest number of persons, and in the greatest degree, is the best." J. Adams, "Thoughts on Government" (1776), in *Works*, IV, 193 (Boston, 1851).

[5] As was well demonstrated in P. A. Palmer, "Benthamism in England and America," in this REVIEW, Vol. 35, pp. 855 ff. (Oct., 1941).

[6] It may be also that the wide latitude left for administrative discretion in the United States, especially in benefactory administration, comes from non-attendance at the rigorous school of Benthamism, with its effort to maximize certainty and minimize discretion.

[7] It was probably Benedetto Croce who first demonstrated, in his *Storia d'Europa*, how social evolutionism antedated biological evolutionism. John Adams oscillated between a philosophy of history based on the idea of progress, as in "A Defence of

Burke and his like had no more success in America than Bentham. One reason is not far to seek. It is that the social institutions to whose continuity European conservatives attached most importance had here been discontinued: hereditary monarchy, landed aristocracy, and an established church had either gone or were going. "Throne and altar," in America, would have been a meaningless slogan. Another reason is that the respect elsewhere reserved for the unwritten law—whether the common law of England or the folk-custom of Germanic peoples—came here, and here alone, to be attached to what European conservatives would have derided as a paper constitution. Even John Adams took pride in the purely human and practical nature of America's instruments of government, whereas Burke had found something almost divine in England's unwritten constitution.[8] American conservatives had then to look in some other direction when they wished to find security against such revolutionary doctrines as human equality, the goodness or perfectibility of man, the pursuit of happiness, majority rule, and the revocability of constitutions.

II

Even in New England, the depravity of man and the rightful authority of God's elect lost their hold on men's minds before ever Timothy Dwight and Fisher Ames had departed this life. Satire, denunciation, and rear-guard actions were not enough. Congregationalist theocracy opened the way to its own destruction when it took the lead in breaking the historic British connection. For the new age, a new doctrine needed constructing; doctrine, too, of nation-wide and not merely Yankee appeal; and doctrine therefore that would be secular rather than religious in its bases. The direction in which this was sought was revealing.

One such direction was the distribution of the powers of government among several agencies able to check and balance one another. In the form in which John Adams stated this doctrine, it meant the distribution of the legislative power among three organs—the executive and two houses—as like as might be to the English tradition of king, lords, and commons, or to Cicero's ideal of a mixed government in which the one, the few, and the many would balance

the Constitutions of Government" (1789) in *Works*, IV, 283, and a cyclical view of history, as *ibid.*, VI, 186.

[8] J. Adams, *Works*, IV, 292.

one another.[9] It was against pleas by the great French doctrinaires, Turgot and Condorcet, for the concentration of legislative power in a single organ that John Adams directed his arguments in favor of continuing to disperse it—"A Defense" against Turgot; "Discourses" against Condorcet. When Thomas Paine, democratic disciple of the French doctrinaires, went one step farther and argued for the right of the people themselves to frame constitutions which should be superior to ordinary governmental organs, John Quincy Adams took refuge in the same British tradition of trusting a representative government with full and unlimited power, even to amend the constitution, so long as the legislature should have two houses and the executive not be wholly dependent upon it.[10]

The reliance of conservatives upon a "mixed constitution" with "balanced organs" did not spring merely from the mechanistic mode of thinking prevalent in the late eighteenth century. Its importance came from the fact that the two houses of the legislature were thought of as serving different class interests. John Adams, for example, said:

"The rich, therefore, ought to have an effective barrier in the constitution against being robbed, plundered, and murdered, as well as the poor; and this can never be without an independent senate. The poor should have a bulwark against the same dangers and oppressions; and this can never be without a house of representatives of the people. But neither the rich nor the poor can be defended by their respective guardians in the constitution without an executive power, vested with a negative, equal to either, to hold the balance even between them, and decide when they cannot agree."[11]

Or again:

"The controversy between the rich and the poor, the laborious and the

[9] J. Adams, "A Defence of the Constitutions of Government of the United States of America," Vol. I (1787), in *Works*, IV, 294 ff. (citing Cicero), and "Discourses on Davila" (1790), *ibid.*, VI, 277 ff. (citing American patriots' attachment to English principles).

[10] J. Q. Adams, "Letters of Publicola" (1791), in *Writings*, ed. W. C. Ford, I (1913). Parrington, *op. cit.*, seems to be mistaken in thinking that Adams here advocated "judicial trusteeship." The evidence seems to me overwhelming that Adams was preaching parliamentary sovereignty, not judicial supremacy—the more so since he did not believe that written constitutions should be superior to statute law.

[11] J. Adams, "A Defense of the Constitutions," Vol. III (1788), in *Works*, VI, 65. James Kent, in his praise of the elder Adams's "great work," missed the point that Adams was not advocating bicameralism as such so much as bicameralism as a device for representing property as well as persons. *Commentaries*, Lect. XI.

idle, the learned and the ignorant, distinctions as old as the creation, and as extensive as the globe . . . will continue, and rivalries will spring out of them. These parties will be represented in the legislature, and must be balanced, or one will oppress the other. There will never probably be found any other mode of establishing such an equilibrium, than by constituting the representation of each an independent branch of the legislature, and an independent executive authority, such as that in our government, to be a third branch and a mediator or an arbitrator between them. Property must be secured, or liberty cannot exist."[12]

Alexander Hamilton said much the same in his famous speech to the federal convention, for which his own brief ran:

"Society naturally divides itself into two political divisions—the *few* and the *many*, who have distinct interests.

If government in the hands of the *few*, they will tyrannize over the *many*.

If in the hands of the many, they will tyrannize over the few.

It ought to be in the hands of both; and they should be separated.

This separation must be permanent.. . . .

And if separated they will need a mutual check.

This check is a monarch."[13]

This conception of a senate as a house of lords, based on class interest, and a bulwark for the wealthy few against the many poor, survived, as we shall see, into the early political career of Daniel Webster.

A different twist—and one more appropriate to national than to state affairs—was given to the doctrine of checks and balances by Madison and Hamilton in the *Federalist*, No. LI, when they argued that the interplay of classes and interests was more important than that of rival organs of government: "It is of great importance in a republic," they wrote, "not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part." The means by which they sought to prevent the majority from endangering the interests of the minority was therefore "comprehending in the society so many separate descriptions of citizens as will render an unjust combination of the majority of the whole very improbable if not impracticable." This enlargement of the orbit of government, so as to

[12] J. Adams, "Discourses on Davila," *Works*, VI, 280.

[13] A. Hamilton, brief for speech at Philadelphia, on submitting his plan for a national constitution, June 18, 1787, in *Works* (ed. H. C. Lodge), I, 375 (1903). Similarly, notes on the speech by Madison and by Yates.

multiply and diversify the interest-systems revolving in it, was regarded by Hamilton as the latest contribution to the science of politics.[14] Bigness was to be a guarantee of liberty.

The conception of freedom depending on the interaction of diverse interests was to lead, as we shall see, from the conservatism of the *Federalist* to that of Calhoun, with the one important difference that the latter sought to give formal constitutional shape to what in his predecessors had been informal and unorganized.

Of the first generation of American post-revolutionary conservatives, it may thus be said that the balance that they sought was a balance of interests; and, with the possible exception of John Quincy Adams, they made it plain that they did not envisage this as merely a balance between different organs of government, but as a balance between economic forces.

III

Another protection for property was an independent judiciary. This implied that "the judges ought to be confident of the security of their salaries and station."[15] A judge's tenure, like a parson's freehold in England, had to be envisaged as a kind of property right. In John Adams's striking phrase, judges "should hold estates for life in their offices."[16] Popular election to a short-term lease of office was only beginning to undermine the independence of state judges, and was destined never to destroy that of the federal judiciary.

Reliance on an independent judiciary implied also judicial power to check "the force of party or the temptations of interest" in the legislature. In the first case cited by Kent of a court annulling a statute, "the court proceeded upon those great fundamental principles which support all government and property" in setting aside a statute "as being against common right and the principles of *Magna Carta*, for it took away the freehold of one man and vested it in another, without any compensation, or any previous attempt to determine the right."[17]

For the most part, however, the courts came to base the annulling of statutes on an appeal to a written constitution. In words remi-

[14] *Federalist*, No. IX.

[15] J. Kent, *Commentaries*, Lect. XIV (1827).

[16] J. Adams, "Thoughts on Government" (1776), in *Works*, IV, 207.

[17] Bowman v. Middleton (South Carolina, 1792), in Kent, *op. cit.*, Lect. XX, citing I Bay 252.

niscent of Rousseau, they appealed from the legislature as agent to the people as principal. Kent, for example, once wrote: "The constitution is the act of the people, speaking in their original character, and defining the permanent conditions of the social alliance."[18] The general adoption of the Rousseauite distinction between constitution-making and statute-making, and its obvious convenience to the judiciary, led to the abandonment of the Adamses' criticism of constitutional conventions and popular referenda as a menace to the established tradition of representative government. No one seemed aware of the paradox involved in thus adapting what had originally been ultrademocratic doctrine to serve conservative ends.

In spite, however, of these lapses into Rousseauite phraseology, common-lawyers tended as a general rule to think of a written constitution as a guarantor of historic rights, rather than as a creator of revolutionary ones—an instrument for defining the powers and organs of an already existing and evolving government, rather than a contract for establishing either society in general or government in particular. One might, in fact, almost say that in Kent's thinking, as in John Locke's, it was property, rather than the constitution, that was really fundamental to society. Towards this social institution, the judge's attitude was one of devotion rather than impartiality:

"The sense of property is inherent in the human breast . . . . Man was fitted and intended by the Author of his being, for society and government, and for the acquisition and enjoyment of property. It is, to speak correctly, the law of his nature. . . . The sense of property is graciously bestowed on mankind, for the purpose of rousing them from sloth and stimulating them to action; . . . . The natural and active sense of property pervades the foundations of social improvement. It leads to the cultivation of the earth, the institution of government, the establishment of justice, the acquisition of the comforts of life, the growth of the useful arts, the spirit of commerce, the productions of taste, the erections of charity, and the display of the benevolent affections. Every man is striving to better his condition; and in the constant struggles and jealous collisions, between men of property and men of no property, the one to acquire, and the other to preserve; and between debtor and creditor, the one to exact and the other to evade or postpone payment; it is to be expected, especially in popular governments, and under the influence of the sympathy which the poor and unfortunate naturally excite, that the impartial course of

[18] Kent, *loc. cit.* (1827).

justice, and the severe duties of the lawgiver, should, in some degree, be disturbed. One of the objects of the constitution of the United States was to *establish justice:* and this it has done by the admirable distribution of its powers, and the checks which it has placed on the local legislation of the states. These checks have already, in their operation, essentially contributed to the protection of the rights of property."[19]

IV

In the early nineteenth century, the paramount importance of property was preached by conservative statesmen from as far apart as Massachusetts and South Carolina. When Daniel Webster strove in 1820 to preserve the system under which representation in the Massachusetts state senate was proportioned not to population, but to wealth, he did not hesitate to state his basic principles:

"It seems to me to be plain, that, in the absence of military force, political power naturally and necessarily goes into the hands which hold the property. In my judgment, therefore, a republican form of government rests, not more on political constitutions, than on those laws which regulate the transmission of property.

"If the nature of our institutions be to found government on property, and that it should look to those who hold property for its protection, it is entirely just that property should have its due weight and consideration in political arrangements. Life and personal liberty are no doubt to be protected by law; but property is also to be protected by law, and is the fund out of which the means for protecting life and liberty are usually furnished. We have no experience that teaches us that any other rights are safe where property is not safe . . . .

"The English Revolution of 1688 was a revolution in favor of property, as well as of other rights. It was brought about by the men of property for their security; and our own immortal Revolution was undertaken, not to shake or plunder property, but to protect it. The acts of which the country complained were such as violated rights of property. . . ."[20]

In an age when state and local services were financed through the property tax, Webster spoke of common schools and of the established state church, not as institutions that commanded respect and reverence because they were themselves among the essential and indispensable organs of society, but as incidents of property.

John C. Calhoun, whose posthumous *Disquisition on Government*

[19] J. Kent, *Commentaries*, Lect. XXXIV, "Of Personal Property."

[20] D. Webster, speech in the constitutional convention on the basis of the Massachusetts senate, December 15, 1820, in *Works* (1853), III, 15f.

distinguished him as the most systematic thinker among the statesmen of his age, regarded it as the essence of constitutional government that it devised organs by which a "concurrence of interests" could be achieved, rather than have a majority interest destroy the interest of a minority.[21] Constitutional organs were to government what government was to society: an attempt to prevent the interest of all being sacrificed to man's naturally greater attachment to self-interest. Each interest would have to be made its own guardian. He sought therefore "to trace the conservative principle of constitutional governments to the necessity which compels the different interests, or portions, or orders, to compromise."[22] The likelihood that this might impede the action of government did not deter Calhoun. So much the better, said he. This would confine government to the protecting of men against one another's selfishness, and would leave them liberty to improve their lot. "To perfect society, it is necessary to develop the faculties, intellectual and moral, with which man is endowed. But the mainspring to their development, and, through this, to progress, improvement, and civilization, with all their blessings, is the desire of individuals to better their condition. For this purpose, liberty and security are indispensable. Liberty leaves each free to pursue the course he may deem best to promote his interest and happiness . . . ; while security gives assurance to each that he shall not be deprived of the fruits of his exertions to better his condition."[23]

The impact of the doctrine of progress thus made Calhoun the first American conservative to aim at restricting rather than extending the powers of government. Where Ames had feared democracy as anarchy, Calhoun feared majority rule as tyranny. Where Hamilton, Webster, and even Calhoun in his younger days, had pursued a policy of mercantilism, under such names as "internal improvement" and the "American system," a newer conservatism was thus to advocate the limitation of governmental power in the interest of private profit. Yet the fundamental con-

[21] J. C. Calhoun, *Disquisition* (written in 1850 or earlier; published in 1851); J. S. Mill, *Representative Government* (1861), Chap. 17, praised Calhoun as "a man who has displayed powers as a speculative political thinker superior to any who has appeared in American politics since the authors of the *Federalist*." The similarities between Mill and Calhoun are so striking as to suggest the indebtness of the later to the earlier writer, despite the greater emphasis of Calhoun on economic, and of Mill on intellectual, progress.

[22] Calhoun, *Disquisition*, in *Works*, I, 38 (1854).

[23] *Ibid.*, p. 52.

servatism of this new cult of liberty and progress was shown by the retention of the old hatred of human equality, though now for new reasons. "Inequality of condition," said Calhoun, "while it is a necessary consequence of liberty, is at the same time indispensable to progress."[24]

V

In their stress on property rights and economic interests, early American conservatives considered themselves thoroughly scientific, in that they believed that their teachings accorded both with psychology and with history. Eighteenth-century psychologists either believed with Hobbes that man was actuated entirely by self-interest, or believed with Adam Smith that he was actuated both by self-interest and by sympathy for his fellows. Calhoun explicitly followed the latter theory, adding that self-interest was so much stronger than sympathy that the cardinal problem of government was to counteract this tendency.

Hamilton as explicitly followed the former theory, with a quotation from Hume in one of his earliest publications:

"Political writers have established it as a maxim that, in contriving any system of government, and fixing the several checks and controls of the constitution, *every man* ought to be supposed a *knave*, and to have no other end, in all his actions, than *private interest*. By this interest we must govern him, and, by means of it, *make him*, notwithstanding his insatiable avarice and ambition, *coöperate to public good*."[25]

James Harrington meanwhile was credited with demonstrating a fixed relationship between property and power in the social statics of every age of human history. As John Adams put it:

"Harrington discovered, and made out, as Toland, his biographer, informs us, that 'empire follows the balance of property, whether lodged in one, a few, or many hands.' A noble discovery, of which the honour solely belongs to him, as much as the circulation of the blood to Harvey. . . . If this balance is not the foundation of all politics, as Toland asserts, it is of

[24] *Ibid.*, p. 57.

[25] A. Hamilton, *The Farmer Refuted* (1775), *loc. cit.*, I, 73, citing D. Hume, *Essays* (1740), Essay V, on "Independency of Parliament"; cited also by J. Kent, *ubi supra*. Hamilton's mercantilist policy of basing public power on private wealth, patriotism on profit, and government on property, recalls the contemporary conception of statecraft as the harmonizing of the "the general interest" with "particular interests"—phrases that had been put into circulation by Helvetius. See W. H. Wickwar, "Helvetius and Holbach," in F. J. C. Hearnshaw (ed.) *Social and Political Ideas of Some Great French Thinkers of the Age of Reason* (1929).

so much importance, that no man can be thought a master of the subject without having well weighed it."[26]

VI

The striking preëminence accorded by early American conservatives to the institution of private property has suggested the generalization that early American social thinking was a dialectic between a conservative English thesis and a radical French antithesis stressing respectively property rights and the rights of man, inequality and equality, aristocracy and democracy, and harking back the one to Locke and the other to Rousseau.[27]

Going back as it did to John Locke's idea that government existed to conserve inequalities in property, the English element in early American conservatism had little to do with contemporary British thinking. In politics, American conservatives lacked Burke's sense of multi-institutional organic continuity, as much as American democrats lacked Bentham's utilitarian yardstick. In economics, they failed to divine the danger to their belief in natural inequality that was latent in the British classical economists' law of rent; nor did they see with John Stuart Mill how often property derived from force, fraud, and political privilege. To be brought up against the flaws in their economics of inequality, they would have to wait for America's own Henry George and Thorsten Veblen—although, by then, they would receive new strength from the social Darwinism of William Graham Sumner. And to be brought up against a multi-institutional interpretation of social authority, they would have to wait for the coming of Francis Lieber, if not of Edward A. Ross and Arthur Bentley. Meanwhile, without any careful analysis of what they meant by property—and without even perceiving that the small freeholder was more likely than not to be a democrat—the early American conservatives continued the long

[26] J. Adams, "Defense of the Constitutions," *ubi supra*, IV, 428, also citing J. Harrington, *Oceana*, ed. John Toland (1700). Toland was also the father of eighteenth-century materialism, and for these reasons must be counted a precursor of materialist interpretations in general; see Wickwar, *Holbach*, p. 74f. Daniel Webster, *ubi supra*, pointed out that the rôle of property in social statics was first recognized, not by Harrington, but by Aristotle.

[27] V. L. Parrington seems to hint at this interpretation, *op. cit.*, Vols. II and III, *passim*, although he complicates a generally tenable theory by associating Hamilton's mercantilism with Adam Smith's anti-mercantilism and by omission to note that the French physiocrats, although agrarian equalitarians, were anything but democrats.

process of adapting Locke to American needs.[28]

The English element in American conservatism was something that was already here, firmly transplanted, and thoroughly acclimated before the Revolution; for it went back beyond the classical economists, beyond Burke, and beyond Hume, to John Locke and James Harrington; and its only considerable reinforcement from England after the Revolution came from the study of Blackstone. In this it differed greatly from the French ideas, according to which, so far from government existing to conserve economic inequality, every constitution needed to be remodeled in order to restore natural equality; for this conception went back no farther than Rousseau, was not introduced into America until the epoch of the American and French Revolutions, and proved much more destructive of the English tradition in American political institutions than of the deep-rooted economic institution of unequal property. Yet it was the impact of these new French ideals that made American conservatives conscious of their own beliefs.

Neither the proponents of the unequal rights of property nor those of equal rights of man set great store by social evolution. All but Calhoun were untroubled by the problem of whether social change was attributable mainly to intellectual movements, as taught by Mill and Comte, or to economic advances as suggested by Marx, although the stage was paradoxically being set for American conservatives to take the latter, and American liberals the former, line. Perhaps because of this slowness in becoming social evolutionists, there was no fruitful marriage between the two schools, such as might have produced a theory of conservative and institutionalized progress towards diminished inequality. Perhaps also it was because there was in fact but little political theorizing; instead, only the political thinking that is shared by leaders and followers in the heat of political strife, and that is characterized more by perpetuation and revamping of familiar ideas and phrases than by the opening of new paths. The intellectual inadequacies of this faith in property were perhaps part of its social strength; for America was here at the beginning of the strange development that was to make its conservatives into Marxists—believers in economic interpretations—and its liberals into anti-Marxist advocates of the power of ideas to reshape society.

[28] On conservative blindness to the political implications of small landed property, see J. T. Horton, *James Kent* (1939), pp. 279 ff., and cf. Webster *ubi supra*.

AMERICAN GOVERNMENT AND POLITICS

A NEW APPROACH TO FEDERAL EXECUTIVE REORGANIZATION

FERREL HEADY

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The recurring problem of executive reorganization once again has become a major issue. One reason is the recognition in all quarters of the desirability of a thorough overhauling of the vast federal administrative structure which mushroomed necessarily under pressure of the war emergency, and of the necessity for a reconversion of the executive organization to a peacetime basis.[1] Another incentive to renewed concern is the urgency of assuring organizational efficiency for the translation into effective action of national policies undertaken as the result of our enlarged domestic and international responsibilities in the postwar period. Furthermore, the particular interest shown by the present Congress in the reduction of governmental expenditures has helped focus attention on the question of economy in governmental operations. The fact that a decade has passed since the last frontal attack on the problem lends support to the demand for a new drive toward reform.

Unfortunately, the revival of interest in a comprehensive reorganization movement comes at a time when the prospect for success in such an undertaking seems, on the surface at least, to be unusually dim. Even under the most favorable circumstances, large-scale executive reorganization involves formidable difficulties. However initiated, a reorganization program must be sanctioned by the enactment of authorizing legislation. This is a hazardous task, demanding mutual confidence and an acceptable working relationship between the legislature and the executive. The fatal barrier to many efforts at reorganization in the past has been the failure to work out a satisfactory *modus operandi* between Congress and the President. The hard fact is that at no time since executive reorganization became a matter of serious concern in this country has the possibility of such coöperative action between Congress and the President seemed as remote as it does right now. Since the method by which reorganization plans are developed for legislative consideration may have a decisive influence on the reaction to the plans in Congress, the crucial need is the

[1] For discussions of the postwar conversion problem, see Arthur W. Macmahon, "The Future Organizational Pattern of the Executive Branch," in this REVIEW, Vol. 38 (1944), pp. 1179–1191; and Louis Brownlow, "Reconversion of the Federal Administrative Machinery from War to Peace," *Public Administration Review*, Vol. 4 (1944), pp. 309–326.

utilization of existing procedures or the development of new ones to the end that suitable proposals may be submitted to Congress and gain congressional passage and presidential approval.

The existing machinery appears clearly inadequate for such a basic reorganization. In the first place, the Reorganization Act of 1945 contains drastic limitations. The essential features of the departmental structure cannot be altered. Most of the major independent agencies are exempt. The expiration date for the act is now close at hand. More important than this, any reorganization plan which the President might submit for the achievement of fundamental changes would have little likelihood of escaping a congressional veto. Congress has plainly demonstrated this by its treatment of recent reorganization plans proposing relatively minor adjustments.[2]

If the existing legislative authorization is inadequate, what are the alternatives? Time and again it has been shown that Congress is unable, on its own initiative, to work out and adopt a comprehensive reorganization of the executive branch. This is true even though congressional committees engage in extensive study of the problem and submit definite recommendations for congressional approval. On the other hand, presidential initiation of a reorganization program, although a moderately successful technique in the past, presents slight promise for the present. A new reorganization proposal, based upon the results of a study either by such an agency as the Bureau of the Budget or by a special presidentially appointed commission, bears little likelihood of acceptance by Congress under present circumstances.[3]

The only method of initiation which seems at all feasible now is some arrangement whereby the President and Congress, acting jointly, might set up a special investigatory body which would study the entire problem and submit recommendations carrying marks of sponsorship by both branches. A reorganization plan so formulated, when translated into proposed legislation, might conceivably achieve passage by Congress and approval by the President. This new approach has recently been adopted in a bill passed by Congress and signed by the President; and it carries the only substantial hope for early progress toward reorganizing the executive branch.

The act stems from identical bills for the establishment of a Commission

[2] For a statement as to the legislative history and principal provisions of the Reorganization Act of 1945, and an account of congressional reaction to the 1946 reorganization plans, see Joseph P. Harris, "Wartime Currents and Peacetime Trends," in this REVIEW, Vol. 40 (1946), pp. 1146–1149.

[3] A concise review of reorganization attempts from World War I through 1946 is contained in Lloyd M. Short, "Adjusting the Departmental System," in this REVIEW, Vol. 41 (1947), pp. 48–55.

on Organization of the Executive Branch of the Government, introduced in their respective houses by Representative Clarence J. Brown of Ohio and Senator Henry Cabot Lodge, Jr. of Massachusetts, both Republicans, shortly after the Eightieth Congress convened in January, 1947.[4]

The proposal had a singularly easy journey through the legislative mill. No alteration of the language of the bill as originally introduced occurred at any stage; nor was a single vote recorded against the proposal, either in committee or on the floor. In the House, the measure was referred to the Committee on Expenditures in the Executive Departments, and reported favorably by unanimous vote. On June 26, the House considered the bill briefly and passed it by voice vote without dissent. The only statement made on the floor was one in support of the bill by Democratic Representative McCormack, acting minority leader.[5]

The Senate likewise referred the bill to its Committee on Expenditures in the Executive Departments, which held hearings, accepted the recommendations of a subcommittee designated to study the proposal, and on June 24, after unanimous vote, reported the bill favorably.[6] On June 27, the day after House passage of the measure, it was taken up in the Senate, where the House version was acted upon and the identical Senate bill indefinitely postponed. Senator Lodge, who had twice previously discussed the bill at some length on the floor,[7] offered a brief explanation and answered minor questions raised by Senator Langer of North Dakota. Following this short exchange of views, the Senate promptly voted unanimous approval also.[8] On July 7, the bill was signed by the President.[9]

The act establishes a Commission of twelve members, designed to include equal representation for each of the two major parties, and an even balance between members drawn from private life and members currently holding public office. Of the six public members, two must be senators, two members of the House of Representatives, and two officials in the executive branch.

To ensure this distribution, the act provides[10] that the appointing power be equally divided among the President of the United States, the president *pro tempore* of the Senate, and the speaker of the House of Representatives. Two of the four members chosen by each appointing

[4] H. R. 775, introduced January 10, 1947; S. 164, introduced January 13, 1947

[5] *Cong. Record*, Vol. 93, No. 122, pp. 7918–7921, June 26, 1947.

[6] Senate Hearing before Committee on Expenditures in the Executive Departments on S. 164, Mar. 13, 1947; Senate Report No. 344 by Committee on Expenditures in the Executive Departments to accompany S. 164, June 24, 1947.

[7] *Cong. Record*, Vol. 93, No. 8, pp. 282–283, Jan. 13, 1947, and *Cong. Record*, Vol. 93, No. 40, pp. 1639–42, Mar. 3, 1947.

[8] *Cong. Record*, Vol. 93, No. 123, pp. 7969–7970, June 27, 1947.

[9] Public Law 162—80th Cong., 1st Sess. [10] Sect. 3.

authority must be private citizens. In addition, the President names two executive officials, the president *pro tempore* two senators, and the speaker two representatives. Not more than one individual in each of these classes of two may be affiliated with either of the two major parties. Any vacancy occurring is to be filled in the same manner in which the original appointment was made.

Section 1 of the act declares that the policy of Congress is to promote economy, efficiency, and improved service in the transaction of the public business in all the agencies of the executive branch of the government, and lists the following as means of achieving this objective: limitation of expenditures to the lowest amount consistent with the efficient performance of essential services, activities, and functions; elimination of duplication and overlapping of services, activities, and functions; consolidation of services, activities, and functions of a similar nature; abolition of such services, activities, and functions as are unnecessary for the efficient conduct of government; and definition and limitation of executive functions, services, and activities.

The Commission is instructed[11] to study and investigate the present organization and methods of operation of all executive agencies in order to determine what changes are necessary to accomplish the purposes set forth in Section 1. Power to hold such hearings as deemed advisable, and to administer oaths to witnesses, is granted the Commission or any member;[12] and every executive agency is directed to furnish such information, suggestions, estimates, and statistics as may be properly requested by the chairman or vice chairman.[13]

The chairman and a vice chairman are chosen by the Commission from among its members;[14] and seven members constitute a quorum.[15] Compensation varies for members who are from Congress, members from the executive branch, and members from private life.[16] Senators and representatives get no additional compensation beyond that received for their services as members of Congress. A member from the executive branch receives his regular salary, plus such additional compensation, if any, as is necessary to make his aggregate salary equal to the congressional salary of $12,500. Private members receive $50 per diem when engaged in the performance of duties vested in the Commission. In addition, provision is made to reimburse all members for travel, subsistence, and other necessary expenses incurred by them in the performance of Commission duties.

Section 8 authorizes the necessary appropriation for carrying out the

[11] Sect. 10(a). [12] Sect. 11(a).
[13] Sect. 11(b). [14] Sect. 4.
[15] Sect. 5. [16] Sect. 6.

provisions of the act. An initial appropriation of $750,000 has been made,[17] which the Senate committee estimated would be sufficient to carry the Commission through the major portion of its work.[18] The Commission has power to appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of the civil-service laws and the Classification Act of 1923, as amended.[19]

The act specifies that the Commission shall make its report of findings and recommendations to Congress within ten days after the Eighty-first Congress is convened and organized, in January, 1949.[20] Ninety days after this report is submitted, the Commission will automatically cease to exist.[21]

What are the prospects for accomplishment by a Commission thus constituted and equipped, and what are some of the operational problems faced by it?

Although no positive attack has been launched on the act creating the Commission, considerable skepticism has been expressed as to the success of the venture. After reviewing the past history of reorganization, Lindsay Warren, comptroller-general of the United States, in a letter addressed to the chairmen of the committees of Congress which considered the bill, stated that results are obtainable only through a delegation to the President by Congress of broad power to make organization changes, subject to congressional disapproval. He contended that "it will serve no useful purpose to investigate and report again in the expectation that this will insure reorganization changes being made. That method has been proved to be unworkable." He concluded that the effort would be futile and a waste of public funds.[22]

James E. Webb, director of the Bureau of the Budget, in a letter to Chairman Aiken of the Senate committee, likewise expressed the view that "if past experience with methods generally similar to those contemplated by the present bill is a valid gauge of its probable results, a

[17] Second Supplemental Appropriation Act, 1948, Public Law 299—80th Cong., 1st Sess., approved July 31, 1947. The House of Representatives approved an appropriation of $500,000 for the Commission to begin operations. In the Senate, the sum was raised to $1,000,000. A conference committee compromised on $750,000, which was the figure originally recommended by the Senate Committee in its report on S. 164.

[18] Senate Report No. 344, p. 3.

[19] Sect. 7. In order to broaden this power of the Commission somewhat, Representative Brown has introduced a bill to amend Section 7 by authorizing the Commission to pay expert consultants at rates not to exceed $50 per day, and to employ organizations or firms on a temporary or intermittent basis. H.R. 4469, introduced November 17, 1947. *Cong. Record*, Vol. 93, No. 148, p. 10720.

[20] Sect. 10(b). [21] Sect. 9.

[22] The letter is reprinted in *Cong. Record*, Vol. 93, No. 122, pp. 7918–7920, June 26, 1947.

substantial degree of success cannot be expected to attend the efforts of the proposed Commission." He stressed the shortcomings of "a one-time effort and single report," and advocated the continuation of procedures provided for in the Reorganization Act of 1945, whereby the President prepares and presents specific reorganization plans for congressional review. Nevertheless, he extended the assurance that the President would, if Congress saw fit to enact the proposed legislation, "extend his full coöperation to the end that the objectives sought may be attained."[23]

Over against these pessimistic predictions may be set certain factors favorable to a successful outcome for the Commission's work. Very important is the time schedule set for submission of the completed report. The date specified comes after the 1948 elections, so that use of the report for campaign purposes by either party is avoided, and partisan pressures on the work of the Commission should be reduced to a minimum. The report is to be made available to a newly elected President and Congress upon taking office, a time most apt to invite favorable action upon it.

Probably the most crucial consideration in speculating on the success of the project is the caliber of the individuals named to serve on the Commission. The division of appointing power and the complex system of representation provide large opportunities for partisan bias. Only a group of men with unusual qualifications and unquestioned prestige, on the other hand, can hope to cope with the immense assignment and have the resulting recommendations adopted.

On this score, the quality of the appointments which have been made is highly reassuring. A mere listing of the appointees is enough to demonstrate that each appointing official conscientiously attempted to select members who would be ideally fitted for the task. President Truman named from the executive branch Secretary of Defense James A. Forrestal and Civil Service Commissioner Arthur S. Flemming. His appointees from private life are Dean Acheson, until recently Under Secretary of State, and George Mead, Dayton industrialist with a long record of volunteer public service. The records of those appointed by Senator Vandenburg and by Speaker Martin are equally impressive. As private members, Senator Vandenburg chose Professor James K. Pollock, chairman of the department of political science at the University of Michigan, and Joseph P. Kennedy, former ambassador to Great Britain and former chairman of the Securities and Exchange Commission and of the Maritime Commission. The selections of Speaker Martin from private life are former President Herbert Hoover and James Rowe, who served as an administrative assistant to President Roosevelt. The Senate is represented by Senators George D. Aiken of Vermont, chairman of the Senate Committee on Expenditures

[23] This letter is reprinted in the report of the Senate Hearing on S. 164, *op. cit.*, at p. 3.

in the Executive Departments, and John L. McClellan of Arkansas, ranking minority member of the same committee. From the House come Representatives Clarence J. Brown of Ohio, House sponsor of the act, and Carter Manasco, Democrat, of Alabama, ranking member of the House committee which considered the bill.[24]

Among the problems of operation and procedure with which the Commission must contend are some resulting from the size and diversified character of the Commission itself. A membership of twelve requires that the entire body shall not attempt to act as a unit in all matters. Most likely it will be found effective to designate sub-committees to deal with various phases of the work, having regard to the particular interests and backgrounds of the several members. Great care must be exercised to avoid the growth of factionalism and friction between Republicans and Democrats, or public and private members, or representatives from the legislative and executive branches.

A vital factor in success or failure will be the competency of the staff which the Commission builds up to do the bulk of the work. The staff may be either a large one, employed on a continuing basis and of sufficient size to undertake all necessary studies, or a much smaller permanent one, supplemented for shorter periods and for specific purposes by specialists engaged from such sources as the public service, academic and research institutions, and private management firms. The latter alternative has definite advantages, and seems to have been favored by sponsors of the program.[25]

The nature of the research program undertaken inevitably will be a reflection of the goals which the Commission sets as to the character of the recommendations which will be the end product of its work. Here it is desirable that primary attention be paid to the really basic issues of executive organization, rather than to the multitudinous petty details which easily might dissipate the energies of the Commission and its staff. Among such fundamental questions, to mention only a few, are the rôle

[24] The Commission, holding its first meeting at the White House on September 29, 1947, elected former President Hoover chairman and Mr. Acheson vice-chairman. An official of the U. S. Civil Service Commission was designated as acting secretary, and preliminary arrangements were made for the procurement of required office space, supplies, and equipment. At a second meeting in Washington on October 20, the Commission discussed its program of operations and authorized the appointment of temporary administrative aides.

[25] See Senate Report No. 344, p. 6. Following a third meeting of the Commission, on November 18, Chairman Hoover announced that the Commission had decided to organize its projects along functional lines, and that the following "task force leaders" had already been named to direct particular studies: John W. Hanes, Fiscal, Budgetary, and Accounting Methods and Control; Robert Moses, Public Works; and Franklin D'Oher, Veterans Affairs. Mr. Hoover himself, with the cooperation of the Bureau of the Budget, is to undertake a study of the presidency and its relations with executive agencies.

which the cabinet should play in executive management and the ways by which the cabinet can be equipped to function in that rôle; the proper span of control of the President; the effective direction of the vast federal field services; the organization and management of the governmental establishments abroad which are required to carry out the foreign commitments of the United States; and the respective responsibilities of the President and Congress in the conduct of administration, together with the means by which those responsibilities can effectively be carried out.[26] The language of Section 1 of the act appears to provide ample authorization for the Commission to concern itself with these matters and to make recommendations regarding them.

The Commission is expected to submit its recommendations to Congress in the form of specific legislative proposals to effectuate the changes indicated by its findings.[27] This does not mean that the proposed legislation is intended to, or should, provide in elaborate detail and in permanent form the exact arrangement of every agency and sub-agency in the executive branch. Rather, the legislation should set forth the general pattern and the main structural outline of the national administration, leaving to the chief executive considerable discretion as to details of organization. Certainly it should be clear by now that provision must be made for organizational adjustments as the need for them appears, and that executive organization is not static. No reorganization, however perfect when put into effect, can be good for all time. In this connection, the device of permitting executive initiative in proposing plans of reorganization subject to congressional disapproval is a technique which has proved its usefulness. It would be unfortunate if it were abandoned altogether as a feature of the machinery to be recommended by the Commission for continuous control of executive organization.

Aside from the immediate results which may be hoped for from this particular Commission in meeting the problem of executive reorganization, the mixed commission device holds much promise for the future. It provides an investigatory body combining public and private, legislative and executive representation, responsible for making policy recommendations to the national legislature on basic public problems. Thus in its objectives and general methods of operation the present Commission is similar to the British royal commissions, although the structure and composition of the Commission have been adapted to fit the American governmental environment. The most interesting precedent in the United States prior to the current experiment was the Temporary National Economic Committee of the late thirties, which, however, contained

[26] For a discussion of some of these major problems and constructive suggestions as to how to cope with them, see Macmahon, "The Future Organizational Pattern of the Executive Branch," *op. cit.*

[27] See Senate Report No. 344, p. 7.

members drawn only from Congress and the executive branch, with no private citizens. The value of the royal commissions in Great Britain is well established and widely appreciated. If the present Commission measures up to its potentialities, it may mark the beginning of a new development in this country furnishing us with an effective instrument meriting further exploration for dealing with problems of national importance.[28]

A NEW CONSTITUTION FOR NEW JERSEY

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New Jersey's new constitution will become effective January 1, 1948. By the overwhelming vote of 653,096 to 184,632 (official figures), the people signified their approval, November 4, of the work of the constitutional convention held at Rutgers University, June 12 to September 10, 1947.

Revision became a live issue when Governor Alfred E. Driscoll, in his inaugural address, emphasized the need for modernizing the state's outmoded 1844 constitution.[1] Quickly a bill was passed calling for popular endorsement of a limited convention—limited in that the question of legislative representation was barred from discussion.[2] At the regular election for county officials on June 3, the voters were given an additional ballot to express their preference for or against the proposed convention. On this ballot they voted also for delegates.

Each county was entitled to as many delegates as it had senators and representatives. In 13 of the 21 counties, delegates were selected by the party organizations on a bipartisan basis, and the final party distribution

[28] For an excellent brief discussion of the advantages and disadvantages of mixed commissions for use in the United States, see "Analysis and Appraisal of S. 164," by George B. Galloway, Advanced Research Section, Library of Congress, reprinted in Senate Hearing on S. 164, *op. cit.*, pp. 4–6.

[1] On previous efforts to revise the constitution, see John E. Bebout, "New Task for a Legislature," *National Municipal Review*, Vol. 33 (Jan., 1944), pp. 17–21; William Miller, "The Report of New Jersey's Constitutional Commission," in this REVIEW, Vol. 36 (Oct., 1942), pp. 900–906.

[2] By this means the small counties were assured of their continued domination of the senate, where all counties, large and small, have but one seat. The first step provided in the bill for tying the hands of the delegates was the ballot statement: "for or against such a constitutional convention, instructed to retain the present territorial limits of the respective counties and the present basis of representation in the legislature." The bill further required each delegate to swear that he would abide by the instructions of the people. Finally, before the convention could submit the constitution to popular referendum, the bill required the secretary of state to certify that the convention had complied with "its instructions as voted by the people." Senate No. 100, State of New Jersey; introduced Feb. 3, 1947.

was: Republicans 54, Democrats 23, and Independents 4. Of the 81 delegates, 50 were lawyers, and of these 21 were either active or retired judges. Twenty-five delegates were serving or had served in the legislature. Sixteen had teaching experience. Eight were women.

The referendum on the question of holding a convention was carried by a ratio of five to one. On June 12, just nine days later, Governor Driscoll formally opened the sessions.[3] Dr. Robert C. Clothier, president of Rutgers University and a delegate from Middlesex county, was elected president. His first major act was the appointment of nine committees, five to consider the substantive provisions of the constitution and four to conduct the business of the convention.[4] During July and August, extensive hearings were held. Committee proposals were then drafted for consideration by the delegates in general debate. The convention adjourned on September 10.

Significant changes in the constitution follow:

Bill of Rights: The right of collective bargaining is recognized for persons in private employment; those in public employment may organize and present their grievances through representatives of their own choosing. Persons may not be limited in their rights nor segregated in the militia or the public schools because of race, religion, or national origin.

Elections and Suffrage: A new clause authorizes the legislature to provide for absentee voting by members of the armed forces in time of peace. This is intended to limit the legislature to providing absentee voting for the military only.

The Legislature and Its Powers: A two-year term is provided for assemblymen, with senators serving four rather than three years. The $500 annual salary is eliminated in favor of legislative determination. A full calendar day must elapse between the second and third readings of a bill unless the house, by a three-fourths vote, determines that the bill is an emergency measure.[5]

A clause concerning control of gambling proved especially troublesome. Gambling in any form was prohibited by constitutional amendment in 1897, but in 1939, a second gambling amendment authorized pari-mutuel

[3] On the opening day, each delegate was presented with certain research material. The Governor's Committee on Preparatory Research for the New Jersey Constitutional Convention coördinated the preparation by individual authors of over 30 monographs. For a list of these, see "Constitution Revision Stirs Researchers," *National Municipal Review*, Vol. 36 (Sept., 1947), p. 475.

[4] Rights, Privileges, Amendments and Miscellaneous Provisions; Judiciary; Legislative; Taxation and Finance; Executive; Militia and Civil Officers; Submission and Address to the People; Arrangement and Form; Rules, Organization, and Business Affairs; Credentials, Printing, and Authentication of Documents. Later a Committee on Public Relations was appointed.

[5] The fraction in the above sentence and elsewhere, is of *all* the members, not of a quorum.

betting at horse races.[6] This left the state in the anomalous position of legalizing big-time betting on horse-racing while making illegal church, firemen, and veterans bingo games. According to the new provision, gambling may be authorized by the legislature providing the "specific kind, restrictions, and control" have been accepted by popular referendum.

The new constitution calls for a liberal construction of laws relating to municipalities and counties. A greater measure of home rule seems assured through a clause authorizing local governments to petition for special legislation. To become effective, a special law must be approved by two-thirds of each house and adopted in the municipality or county either by action of the governing body or by popular referendum.

Executive: The governor's constitutional position, heretofore among the country's weakest, is strengthened considerably. His term is extended from three years to four and he may succeed himself once. The election will be in odd-numbered years. In order to override the governor's veto, a two-thirds vote is required instead of a majority. The period for gubernatorial consideration of bills at the end of a legislative session is increased from five to forty-five days. The legislature will automatically reconvene to consider vetoed measures, thus eliminating the pocket veto.

Important changes were made in the realm of state administrative organization. All state agencies except temporary commissions are to be allocated among not more than 20 principal departments, which are to be headed by single executives "unless otherwise provided by law." Although the politically powerful commission-governed agencies will thus retain their status, the governor must approve, and he may remove, executive heads selected by commissions. Single executives, appointed with the senate's consent, serve at the governor's pleasure. Exceptions are the secretary of state and the attorney-general, whose terms are to be concurrent with that of the chief executive. The initial allocation of agencies is to be made by the legislature prior to July 1, 1949, and if the legislature does not complete it by that time, the governor "shall" call a special session of the legislature to consider exclusively his plans for effecting the reorganization.

In order to put teeth into the customary assertion that the governor shall "take care that the laws be faithfully executed," he is empowered to take court action to enforce compliance with the law or to restrain violation of the law by any officer or agency of the state. The legislature is instructed to provide for the publication of rules and regulations promulgated by the administrative departments.

Judicial: Far-reaching reforms were made in the state's antiquated and top-heavy judicial system. The highest judicial body, the sixteen-man

[6] Two of the four occasions since 1844 when New Jersey's constitution was changed concerned gambling.

court of errors and appeals, was eliminated. So also was the supreme court, whose nine judges have sat on the court of errors and appeals. The equity court as a separate system was abolished.

The new court structure consists of a supreme court of seven justices; a superior court with appellate, law, and chancery divisions; county courts; and inferior courts of limited jurisdiction. The supreme court is made responsible for rules governing the administration of all courts and "subject to law, the practice and procedure in all such courts." An administrative director is to be appointed by the chief justice to serve at his pleasure.

Members of the supreme and superior courts will be appointed initially for seven years and, upon reappointment, during good behavior with retirement at seventy. Upon certification by the supreme court, the governor may appoint a commission of three to investigate any question of incapacity and, upon their recommendation, may retire any member of the court. Supreme and superior court members are prohibited from "engaging in the practice of law or other gainful pursuit."

Public Officers and Employees: Constitutional status is given the merit system for state employees. The state auditor, whose duty is specified as "post auditing," is to be selected at a joint meeting of the legislature. County prosecutors will continue to be appointed by the governor. County reform may be impeded by the fact that county clerks, surrogates, and sheriffs are given constitutional status.

Taxation and Finance: The success or failure of the convention swayed in the balance during the period of the debates on the tax clause. Party leaders arrived at a compromise designed to eliminate the loss of revenue sustained by cities having second-class railroad property (stations, yards, and terminals). Such railroad property, sixty per cent of which is located in Jersey City, is taxed by state law at a rate much below the average city rate. The new constitution requires all real property to be assessed according to the same standard of value and to be taxed at the "general tax rate of the taxing district in which the property is situated."

Veterans are given a five-hundred-dollar exemption from taxation on real and personal property. The constitutional debt limitation of $100,000 is increased to one per cent of the general appropriation. Improvements resulting from the redevelopment of blighted areas by municipal, public, or private corporations may be exempted from taxation for a limited period. The legislature is authorized to provide for the transportation of children "to and from any school."

Amendments: The amending clause is liberalized slightly. In contrast to the old requirement of action by successive legislatures prior to popular referendum, a three-fifths vote of both houses now places the proposed amendment before the people. Failing the three-fifths vote, a majority in succeeding legislative years is needed before a referendum may be held.

RURAL LOCAL GOVERNMENT

COUNTY AND TOWNSHIP GOVERNMENT IN 1946*

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The first postwar year found rural local government facing problems of readjustment. As the rural units had felt the impact of war less forcefully than the states and cities, so their reconstruction problems were less acute; but they were none the less genuine and significant. To mention but a few, these included the construction of deferred public-works projects, the provision of housing and various forms of assistance for returned veterans, the modernization and expansion of public-welfare services, the securing of additional revenues adequate to finance an expanded program of local activities, and the reorganization of local areas and machinery with a view to fostering economy and efficiency in a period of mounting governmental costs. Though less than a dozen state legislatures held regular sessions, the year's enactments served both to initiate reconstruction programs begun a year earlier in many states and to indicate the nature of other measures likely to be more generally adopted in the future. Statutes of previous years formed the basis of various improvements in local government which were effected in 1946.[1]

I. AREAS

The school-consolidation programs begun in the preceding year in Illinois and Kansas[2] continued to make progress. At the beginning of October, 174 consolidations involving 897 districts had been effected in Illinois.[3] In Kansas, some 2,000 districts have already been eliminated, and it has been estimated that the program in that state, as revised early in 1947, may ultimately reduce the number of districts, originally well over 8,000, to only 3,000.[4]

One of Missouri's 24 township-organization counties voted in the 1946

* For previous annual summaries, see this REVIEW, Vol. 41, pp. 28–47, and earlier articles listed therein.

[1] Since the 1945 Missouri session laws have not heretofore been available, various statutes of that year implementing provisions of the new Missouri constitution are mentioned in this article.

[2] See this REVIEW, Vol. 41, pp. 29–31.

[3] *Public Aid in Illinois* (monthly publication of the Illinois Public Aid Commission), Vol. 14, no. 2, p. 10 (Feb., 1947).

[4] John G. Stutz, note in *National Municipal Review*, Vol. 36, p. 333 (June, 1947).

election to abandon the township system, while in two other counties the proposition to abandon townships was voted on and defeated.[5]

Interest in city-county consolidation continued to spread, and steps were taken which ultimately resulted in the effecting of one such consolidation. This was in Louisiana, where the 1946 legislature proposed and the voters of the state ratified a constitutional amendment providing for the creation of a city-parish charter commission for the city of Baton Rouge and the parish of East Baton Rouge. The charter commission consisted of nine members—three appointed by the police jury of the parish, two by the Baton Rouge city council, and one each by the school board, the local chamber of commerce, the director of the state department of public works, and the president of the state university. It was made the duty of the commission to devise, for submission to the parish voters, a plan of government for the parish and the several municipalities therein which might provide for the consolidation or reorganization of all or part of the local governmental units. Tentative proposals drafted by the commission would have consolidated the major functions of the parish and city under a manager form of government. As a result of objections voiced at public hearings, however, the proposals were modified to substitute an elective mayor-president for the appointive manager. With this change, but without reducing the powers of the chief executive, the new charter was approved by the voters in August, 1947. The first officers of the new city-parish government will be elected in January, 1948. Numerous other communities were displaying interest in the possibilities of city-county consolidation. These included, among others, Bibb county, Georgia, and the city of Macon; Muscogee county, Georgia, and the city of Columbus; Nashville and Davidson county in Tennessee; and Missoula county and the city of Missoula in Montana.[6]

II. ORGANIZATION AND PERSONNEL

New Offices. New local offices and agencies were created in a few instances. Louisiana empowered parishes to establish planning commissions whose duty it will be to prepare and adopt master plans for the physical development of unincorporated areas. Rhode Island created in each town a redevelopment agency with power, upon authorization by the town council, to plan and carry out projects for redeveloping blighted areas.

[5] Information supplied by Dr. Estal E. Sparlin, assistant director, Governmental Research Institute, St. Louis. The writers are indebted also to Dr. Sparlin for reporting the items from the Missouri session laws noted at various subsequent points.

[6] *Acts of Louisiana*, 1946, no. 389; H. M. O., note in *National Municipal Review*, Vol. 35, pp. 491–492 (Oct., 1946); Elwyn A. Mauck, notes in *ibid.*, Vol. 35, pp. 266–267, 492, 615 (May, Oct., Dec., 1946), Vol. 36, pp. 413, 468 (July, Sept., 1947).

Georgia counties were authorized to establish recreation boards for the conduct of supervised recreation programs. The counties of Idaho were empowered to establish hospital boards and to appoint veterans' service officers.[7] Seventeen Illinois counties, acting under enabling legislation of 1943, voted to establish county health departments or to join in establishing multi-county departments.[8]

Office Abolition and Consolidation. Legislation was enacted in Missouri to make effective the constitutional provision abolishing justices of the peace and substituting therefor a system of county magistrates. In the 94 counties of less than 30,000 population, the probate judge is the county magistrate, so that in those counties the change amounts to an outright abolition of the justice courts, with the probate judge now performing their former functions. Each of the 15 counties of between 30,000 and 70,000 population has an elective magistrate, and each of the three counties having a population between 70,000 and 100,000 has two magistrates. In St. Louis county, there are four magistrates; in Jackson county (Kansas City), six; and in St. Louis city, ten. Constables were also abolished throughout the state except in St. Louis and Jackson counties and the city of St. Louis.[9]

In Richmond county (Augusta), Georgia, various office consolidations followed the gaining of control of the county board by a local good-government league. Under the new set-up, a single officer will serve as clerk of the board, custodian of the courthouse, and purchasing agent; the positions of county physician and coroner's physician are combined; and the office of superintendent of roads, bridges, and stockade represents a consolidation of three former positions.[10]

County and Town Executives. No additions were made during the year to the list of manager-governed counties. However, in two counties—Fulton (Atlanta) in Georgia and McMinn (Athens) in Tennessee—there were successful manager movements resulting in the adoption of manager plans which became effective early in 1947.

Grand juries in Fulton county have recommended again and again that the question of adopting manager government be submitted to the county voters. Submission of the question was finally made in the 1946 (June) primaries, and the vote was more than two to one in favor of the manager

[7] *Acts and Resolutions of Georgia*, 1946 (adjourned sess.), p. 152; *General Laws of Idaho*, 1946 (1st extra sess.), chs. 27, 38; *Acts of Louisiana*, 1946, no. 319; *Acts and Resolves of Rhode Island*, 1946, p. 361.

[8] Information supplied by Dr. Richard F. Boyd, chief of the Division of Local Health Administration, Illinois Department of Public Health. See *infra*, "Functional Consolidation." Five county departments had previously been established under the 1943 legislation.

[9] *Laws of Missouri*, 1945, pp. 608, 807, 826.

[10] Elwyn A. Mauck, note in *National Municipal Review*, Vol. 36, p. 50 (Jan., 1947).

plan. In conformity to the wishes of the electorate as thus expressed, the county board of commissioners authorized the appointment of a five-member committee to draft, with the aid of the county auditor and the county attorney, a manager bill for presentation to the state legislature at its 1947 session. The bill thus drafted was promptly passed by both legislative houses and signed by the governor.[11]

The manager movement in McMinn county followed several months of stormy political controversy which culminated in armed violence.[12] When a slate of ex-GI candidates for county office won in the August election and finally succeeded in wresting control from the party machine which had long dominated the county, basic governmental reforms were in order. A manager charter for the county was drafted by the local good-government league. Sponsored by various civic organizations and leading citizens, this charter, in the form of a special statute, was introduced in the Tennessee legislature by representatives from McMinn county and enacted into law. The law, which took effect immediately upon passage, named persons endorsed by the league as members of the first county council under the manager plan. These members will serve until the regular county election in 1948.[13] Adoption of manager government by Fulton and McMinn counties brought to eleven the number of American counties operating under manager plans recognized by the International City Managers' Association.[14]

Petroleum county, Montana, the first strictly rural county to adopt manager government, was reported, on the basis of four years' experience, to be finding the plan very successful. Substantial reductions have been made in the number of county officers, total administrative costs, and county indebtedness.[15] In Oregon, Clackmas county voted on but defeated a manager charter prepared under the provisions of a 1945 enabling act. San Diego county, California, created the position of "chief administrative officer," the duties of which will include supervision of most of the county's departments.[16]

The town manager plan continued to spread in New England, especially in Maine. Upwards of a dozen Maine towns adopted manager government during the year, bringing to 80 the total number of Maine municipalities,

[11] Elwyn A. Mauck, notes in *National Municipal Review*, Vol. 35, pp. 320, 375 (June, July, 1946), Vol. 36, p. 169 (Mar., 1947).

[12] For an able account of this episode, see Theodore H. White, "The Battle of Athens, Tennessee," *Harper's Magazine*, Vol. 194, pp. 54–61 (Jan., 1947).

[13] Elwyn A. Mauck, notes in *National Municipal Review*, Vol. 35, pp. 435–436 (Sept., 1946), Vol. 36, pp. 50, 169–170, 224 (Jan., Mar., Apr., 1947).

[14] See the City Manager Directory, *Municipal Year Book*, 1947, pp. 484–496.

[15] R. R. Renne, "Too Small to be Efficient?," *National Municipal Review*, Vol. 36, pp. 78–82 (Feb., 1947).

[16] Elwyn A. Mauck, notes in *National Municipal Review*, Vol. 35, pp. 206, 321 (Apr., June, 1946), Vol. 36, p. 111 (Feb., 1947).

principally towns, which were operating under manager government by early 1947.[17] In New Hampshire, Conway became the first town to adopt the provisions of an optional town-manager law enacted in 1929.[18] The town of Cavendish, Vermont, adopted manager government; and in Connecticut the town of Windsor approved a manager charter in town meeting and authorized its submission to the 1947 session of the state legislature.[19]

Personnel Administration. A civil service system was established during the year for Kern county, California; and two New Jersey townships voted at the November election to adopt the provisions of the optional state civil service act. Arlington county, Virginia, adopted a retirement system for its employees.[20]

III. FUNCTIONS

Public Works. In several instances, state legislatures conferred upon counties power to provide services of a public-works or related nature. In Mississippi and South Carolina, counties were authorized, along with certain other local-government units, to provide housing for veterans. Counties in those states may acquire housing facilities by purchase or construction, or may coöperate in housing projects with local housing authorities or with the federal government. The Mississippi law authorizes the provision of transportation where necessary to enable veterans to make proper use of the housing facilities provided. A special session of the Ohio legislature appropriated six millon dollars for allocation to the counties of the state, on the basis of population, as a county veterans housing fund. This fund, which may be supplemented by contributions from political subdivisions of the county, from the federal government, or from private sources, is to be used by the county commissioners to provide temporary emergency housing for rental to veterans and their families. Mississippi empowered county boards of education serving consolidated school districts to borrow money for the construction and equipment of a home for teachers.[21]

Virginia counties were authorized, individually or in groups, to create

[17] See Grace L. Geer, "Council-Manager Government," *Municipal Year Book*, 1947, pp. 219–223; the City Manager Directory, *ibid.*, pp. 487–488.

[18] Lashley G. Harvey, "First Break in New Hampshire," *National Municipal Review*, Vol. 35, pp. 521–524 (Nov., 1946).

[19] Grace L. Geer, *loc. cit.;* H. M. Olmsted, note in *National Municipal Review*, Vol. 35, p. 532 (Nov., 1946).

[20] James M. Mitchell, "Personnel Developments in 1946," *Municipal Year Book*, 1947, pp. 101–106; Elwyn A. Mauck, note in *National Municipal Review*, Vol. 35, p. 436 (Sept., 1946); H. M. Olmsted, note in *ibid.*, p. 600 (Dec., 1946).

[21] *Laws of Mississippi*, 1946, chs. 445, 467; *Legislative Acts and Joint Resolutions of Ohio*, 1945–46, p. 806; *Acts and Joint Resolutions of South Carolina*, 1946, p. 1737.

public corporate bodies for the establishment and operation of hospitals or health centers. The Kentucky legislature provided that counties may levy taxes for the acquisition of lands for permanent public forests. Lands so acquired are to be protected at all times from fire and grazing, and must be open to recreational use so far as such use does not interfere with use of the land to the best advantage as a forest. Other legislation empowered the counties of Kentucky to condemn land needed for flood-control purposes, and those of Virginia to establish county garbage-dumps.[22]

Business Enterprises. Public familiarity with utilities and other enterprises operated by municipalities has tended to obscure the fact that similar undertakings conducted by counties are not unimportant. According to Census Bureau estimates, there were approximately 100 county-operated enterprises in 1945, with a total operating revenue of ten million dollars. More than half of the total revenue was from liquor dispensaries operated by 32 counties—7 in Maryland and 25 in North Carolina. Other county enterprises were estimated to include 32 airports, 22 water-supply systems, 5 electric light and power systems, and 9 toll bridges and miscellaneous projects.[23]

Public Welfare. Little that was novel occurred during the year in the field of public welfare. Georgia counties were authorized, individually or jointly, to provide supervised recreation systems. Idaho was added to the list of states which empower counties to assist veterans, through a county service officer, in securing the benefits to which they are entitled under federal and state laws.[24]

As a public-welfare institution, the county asylum or poorhouse long ago fell into general disrepute, and over the years many of these establishments have been abandoned. With the passage of the federal Social Security Act, it was widely assumed that this legislation would sound the death-knell of the poorhouse because of the provision that federal funds should not be available for assistance payments to aged or blind persons who were inmates of public institutions. It soon became evident, however, that a large percentage of the inmates of the county asylums were infirm or chronically ill persons who had no relatives or friends with whom they could live and who therefore required some sort of institutional care. While the asylums of some additional counties were closed during the 1930's, the impact of the federal program upon the county institution was much less noticeable than had been commonly anticipated, and a large majority of the asylums, over the country as a whole, remained open. During recent years, some states

[22] *Acts of Kentucky*, 1946, chs. 93, 220; *Acts of Virginia*, 1946, chs. 132, 344.

[23] United States Bureau of the Census, *County Finances: 1945* (Preliminary Summary), July, 1947.

[24] *Acts and Resolutions of Georgia*, 1946 (adjourned sess.), p. 152; *General Laws of Idaho*, 1946 (1st extra sess.), ch. 27.

have wisely taken steps designed to transform the traditional poorhouse, with all its shortcomings, into a modern nursing home intended primarily for the care of chronically ill persons. Illinois, for example, enacted in 1945 legislation permitting recipients of old-age assistance and pensions for the blind to purchase care in county-maintained institutions, provided that those institutions meet the approval of the state public aid commission. Since the federal government will not participate in assistance payments to institutional inmates, the full amount of payments made to such persons must, of course, come from state funds. To qualify for state approval, a county home must meet prescribed standards with respect to structure, absence of fire hazards, sanitation, equipment, and facilities for medical care. County boards have thus been encouraged to convert their poorhouses into modern institutions, usually called nursing homes or by some similar name, which are fully equipped to provide for the welfare and comfort of infirm and chronically ill patients. Three classes of patients receive identical care in these homes: (1) indigent persons whose care is paid for from ordinary poor-relief funds; (2) old-age and blind pensioners who pay for their care from these public grants; and (3) persons with private means who pay for their own care. By September, 1945, 12 of the state's 72 county asylums had been converted into state-approved nursing homes and more than 30 others were in process of conversion.[25]

Planning and Regulatory. Louisiana authorized the establishment of parish planning commissions charged with preparing and adopting master plans for the physical development of unincorporated areas. When a master plan has been adopted for any parish, no street, public building, park, or public utility may be constructed or authorized until the planning commission's approval has been secured or its disapproval has been overruled by a two-thirds vote of the parish governing body. Kentucky counties and Rhode Island towns were empowered to adopt and enforce zoning regulations for the protection of approaches to airports. Fulton county (Atlanta), Georgia, was authorized to adopt regulations for fire prevention in unincorporated areas, and for the protection of lives and property in such areas against loss by fire. To this end, the county is empowered to "lay out and define zones in unincorporated areas, and regulate the type of construction and the materials with which buildings may be constructed in said zones, which regulations may vary between one zone and another." Regulations may be prescribed governing the storage of inflammable materials and explosives, and a fire marshal may be appointed to enforce the various regulations. Rhode Island town councils were empowered to enact ordinances for the regulation of air pollution.

[25] Raymond M. Hilliard, "The Emerging Function of Public Institutions in Our Social Security Structure," *Social Service Review*, Vol. 20, pp. 479–493 (Dec., 1946). Of the 102 Illinois counties, two have never maintained poorhouses and 28 closed their institutions between 1932 and 1945.

Such ordinances are to be designed to eliminate or control the emission of dense smoke from buildings, engines, or motor vehicles, or the escape or discharge into the air of cinders, dust, gas, steam, or noisome odors. The metropolitan Missouri counties of St. Louis and Jackson were authorized to make public health regulations not in conflict with state health rules.[26]

Functional Consolidation. Coöperative performance of local functions by two or more governmental units continues to gain in favor, and during 1946 there were several instances of legislative authorization of such coöperation. Missouri enacted legislation implementing the new constitutional provision which authorizes two or more counties, up to ten in number, to join in the performance of any common function or service. In Kentucky, where Jefferson County and the city of Louisville have for several years operated a joint health department, the legislature authorized two additional city-county projects on the part of those units. One of these is a joint city-county board of public welfare to combine the welfare functions presently performed by the county and city governments, respectively. The board will be composed of five members—two appointed by the county judge, two by the mayor of Louisville, and the fifth chosen by these four. The board is empowered to make necessary rules and regulations for carrying on its activities, and to appoint, on the basis of training, ability, and experience, a director of public welfare to serve as administrative officer of the board. The second authorization provides that the city and county may acquire and operate a joint city-county building, to be used for any governmental purpose in which either unit or both may be engaged. Still another Kentucky statute provides that counties may join with third-class cities situated therein in the establishment and operation of a market place for the marketing, by producers, of agricultural and dairy products.[27]

The Louisiana constitution was amended to empower the legislature to create a recreation and park commission to serve the whole of East Baton Rouge parish, including the city of Baton Rouge.[28] Georgia counties were authorized to join with municipalities in providing supervised recreation systems; and the Virginia legislature provided that counties may act jointly with each other or with municipalities in the acquisition and operation of airports.[29] In Illinois, three bi-county health departments and one four-county department were established through local referenda.

[26] *Acts and Resolutions of Georgia*, 1946 (adjourned sess.), p. 138; *Acts of Kentucky*, 1946, ch. 49; *Acts of Louisiana*, 1946, no. 319; *Laws of Missouri*, 1945, p. 974; *Acts and Resolves of Rhode Island*, 1946, pp. 189, 242.

[27] *Acts of Kentucky*, 1946, chs. 24, 199, 211; *Laws of Missouri*, 1945, p. 1395.

[28] *Acts of Louisiana*, 1946, no. 387; Elwyn A. Mauck, note in *National Municipal Review*, Vol. 35, p. 615 (Dec., 1946).

[29] *Acts and Resolutions of Georgia*, 1946 (adjourned sess.), p. 152; *Acts of Virginia*, 1946, ch. 220.

IV. FINANCE

With the end of the war, rural local units, like the states and cities, were faced with the necessity of increased expenditures. Capital outlays, delayed during the war years because of the dearth of labor and materials, are in many instances becoming urgent, and although some units have accumulated postwar reserve funds for such purposes,[30] the amounts of those funds are generally small in comparison with needs. The rise in the price level has also been an important factor in compelling increases in public expenditures. Rising expenditures have in turn necessitated increases in revenues and additional borrowings.

Revenue and Taxation. The Georgia statutes were amended to enlarge county taxing powers. New or higher levies were authorized for a large variety of specific purposes including public health, poor relief, agricultural and home-demonstration agents, forest-fire protection, airports, parks, libraries, pensions for county employees, and social security payments to the aged, the blind, and dependent children. Troup county was empowered, by a special act, to levy license and occupation taxes on business enterprises carried on in unincorporated areas. In Missouri, the legislature granted increased taxing power to Jackson and St. Louis counties for hospital purposes, and to all counties for public-health purposes. Other county rates in that state may be increased, for a period of four years, by referendum vote. Mississippi counties were authorized to lease for oil, gas, and mineral exploration and development all county-owned lands and any lands conveyed by the county to the state for park purposes with mineral rights reserved.[31]

New York enacted a significant law providing for annual state grants to towns, as well as to cities and villages, for the support of local government and the reduction of local real estate taxes. In the rural counties of the state, these grants are to be made on a population basis and paid to the respective county treasurers for apportionment to the cities, towns, and villages. The grants are to be paid to the local units in quarterly instalments and placed in their general funds.[32]

Borrowing. The power of Louisiana parishes to borrow for the construction of public works and buildings was enlarged to include several types of projects not previously covered. Among the projects newly included are auditoriums, coliseums, stadiums, and buildings for agricultural and livestock exhibitions. Kentucky counties were authorized, along with the state government and other political subdivisions, to issue revenue bonds

[30] See this REVIEW, Vol. 38, pp. 1106–1107; Vol. 41, p. 41.

[31] *Acts and Resolutions of Georgia*, 1946 (adjourned sess.), pp. 18, 87; *Laws of Mississippi*, 1946, chs. 185, 242; *Laws of Missouri*, 1945, pp. 970, 986, 1778.

[32] *Laws of New York*, 1946, ch. 301. Basic annual per capita grants are fixed at $6.75 for cities, $3.55 for towns, and $3.00 for villages.

for financing the acquisition and construction of public projects. The term "public project" is broadly defined to include "any lands, buildings or structures, works, or facilities suitable for and intended for use as public property for public purposes or suitable for and intended for use in the promotion of the public health, public welfare, or the conservation of natural resources."[33]

V. HOME RULE AND OPTIONAL CHARTERS

Missouri's new constitution confers home-rule powers upon counties of more than 85,000 population.[34] At present there are four such counties in the state—Buchanan (St. Joseph), Greene (Springfield), Jackson (Kansas City), and St. Louis—and in three of these interest has already been displayed in the possibility of securing home-rule charters. In Jackson county, where the movement has the support of the League of Women Voters and various other civic organizations, petitions are being circulated for the appointment of a charter commission. In St. Louis county, the committees of both major political parties have endorsed the charter movement; and there is some interest in the plan in Buchanan county.[35]

The Missouri constitution also provides that counties shall be divided into not more than four classes and that alternative forms of government may be provided for the counties of any class. In compliance with the classification mandate, a statute was enacted which divides the state's 114 counties into four classes on the basis of assessed valuation. Class I is composed of the two metropolitan counties of St. Louis and Jackson, and Class II of the three other urban counties of Buchanan, Greene, and Jasper (Joplin). The latter county does not yet fall within the home-rule group, but may reach the required 85,000 population by the 1950 census. Class III includes 77 counties, while Class IV is composed of 32 counties—principally in the Ozark region—having assessed valuations of less than 10 million dollars.[36] Despite the classification measure, no alternative forms of county government were provided. Bills to provide three alternative forms for fourth-class counties were approved by the house of representatives, but failed of passage in the senate.

In Montgomery county, Maryland, the better-government forces renewed their fight for a home-rule manager charter. Notwithstanding the defeat of such a charter at the polls in 1944,[37] the citizens voted at the

[33] *Acts of Kentucky*, 1946, ch. 126; *Acts of Louisiana*, 1946, no. 69.

[34] See this REVIEW, Vol. 39, p. 1116.

[35] Information supplied by Dean William L. Bradshaw, School of Business and Public Administration, University of Missouri.

[36] Estal E. Sparlin, "Missouri Counties Streamlined," *National Municipal Review*, Vol. 35, pp. 337–343 (July, 1946).

[37] See this REVIEW, Vol. 39, p. 1111.

1946 election to choose a new charter commission to draft a charter for submission in 1948.[38]

VI. INTERGOVERNMENTAL RELATIONS

The tendency toward increased coöperation among governmental agencies at all levels continued, together with an inclination of state legislatures to encourage that trend. New York's provision for state financial aid to town governments has already been noted.[39] The legislature of that state also authorized state aid to counties and cities for the care of tuberculosis patients. Missouri enacted two state-aid measures applicable to counties. One of these authorizes a program of state grants to counties for the improvement of county roads used as milk routes, mail routes, and school-bus routes. Under the other act, counties may obtain state-aid funds to assist in the building of airports.[40]

Counties of Mississippi and South Carolina were authorized to coöperate with local housing authorities and with the state and federal governments in providing housing for war veterans. Louisiana provided that the state department of public works may act as agent for parishes and other local units in securing federal aid for airports; while county governing bodies in Kentucky were authorized to coöperate with the state division of forestry in county-wide programs for the prevention and control of forest fires. The New York State superintendent of public works was empowered, when authorized by the governor, to enter into contracts with counties, towns, or municipalities to assist the local units in the control of ice and snow during emergency situations.[41]

The soil conservation district program continued to afford the most extensive example of federal-state-local coöperation in rural areas. Local soil conservation districts established under state law receive assistance from both state and federal governments and sometimes from county governments as well. All 48 states now have soil conservation district laws or similar legislation.[42] By September 15, 1946, farmers and ranchers in the various states had organized nearly 1,700 soil conservation districts under these statutes. Embraced within these districts were more than 900 million acres of land constituting four million farms—two-thirds of all the farms in the country. Most of the districts had entered into "memoranda

[38] Elwyn A. Mauck, note in *National Municipal Review*, Vol. 35, p. 616 (Dec., 1946).

[39] *Supra*, "Revenue and Taxation."

[40] *Laws of Missouri*, 1945, pp. 1315, 1471; *Laws of New York*, 1946, ch. 999.

[41] *Acts of Kentucky*, 1946, ch. 204; *Acts of Louisiana*, 1946, no. 207; *Laws of Mississippi*, 1946, ch. 467; *Laws of New York*, 1946, ch. 305; *Acts and Joint Resolutions of South Carolina*, 1946, p. 1737.

[42] See this REVIEW, Vol. 41, p. 29.

of understanding" with the United States Department of Agriculture which would enable them to receive assistance from the federal Soil Conservation Service. The Service was also assisting 21 grass conservation districts, 11 wind-erosion districts, and an irrigation district, which together embraced approximately 15 million acres and some 17,000 farms. A program of practical research being conducted coöperatively by the Soil Conservation Service and state agricultural experiment stations is designed to develop and improve soil and water conservation practices.[43]

[43] *United States Government Manual* (Division of Public Inquiries, Government Information Service, Bureau of the Budget, Washington), first 1947 edition, pp. 301–303. For a recent discussion of intergovernmental relationships in the soil conservation district program, see Herman Walker, Jr., and W. Robert Parks, "Soil Conservation Districts: Local Democracy in a National Program," *Journal of Politics*, Vol. 8, pp. 538–549 (Nov., 1946).

TEN YEARS OF THE SUPREME COURT: 1937–1947*

I. FEDERALISM

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I

The net result of ten years of extraordinary activity is that the Supreme Court has gone a long way toward squaring the legal concept of American federalism with the intent—and, it is tempting to add, the plain language—of the Constitution. The most important thing that has happened is that the Court has snuffed out the heresy of "dual federalism." This subtle weapon of *laissez-faire* economics was utilized at a fairly early date, notably in the two child labor cases, to strike down federal reform legislation, but it achieved great weight, which comes with reiteration in important cases, during 1935 and 1936, when the Court was grimly determined to save the country from the horrors of the New Deal.[1] Briefly, the doctrine holds that the mere existence of states constitutes an independent limitation on the exercise of national powers. Thus, Justice Day asserted in the first child labor case: "The grant of authority over a purely federal matter was not intended to destroy the local power always existing and carefully reserved to the States in the Tenth Amendment to the Constitution."[2] This theory is inconsistent with the principle of federal supremacy, a principle which the present Court has restored to its proper place in American constitutional law. But, in sustaining a sweeping exercise of national power, the Court has by no means been unmindful of the proper status of

* A symposium arranged and edited by Robert E. Cushman, Cornell University. The complete symposium embraces six articles, but considerations of space require that only three be presented in the present issue. The remaining three—by Professors Robert J. Harris, Robert E. Cushman, and C. Herman Pritchett—will appear in February.

[1] Hammer v. Dagenhart, 247 U. S. 251 (1918); Bailey v. Drexel Furniture Co., 259 U. S. 20 (1922); Railroad Retirement Board v. Alton R. Co., 295 U. S. 330 (1935); Schechter Poultry Corp. v. United States, 295 U. S. 495 (1935); United States v. Butler, 297 U. S. 1 (1936); Carter v. Carter Coal Co., 298 U. S. 238 (1936); Ashton v. Cameron County Water Improvement District, 298 U. S. 513 (1936). See E. S. Corwin, *The Twilight of the Supreme Court* (1934), Chap. 1, and *The Commerce Power versus State Rights* (1936), Chap. 5.

[2] Hammer v. Dagenhart, 247 U. S. at 274. Another good example of this sort of thinking is found in Justice Roberts' opinion in United States v. Butler, where he said (297 U. S. at 68) that the Court is not required to ascertain the scope of the power delegated to Congress to spend money to provide for "the general welfare of the United States," because, "wholly apart from that question," the Agricultural Adjustment Act "invades the reserved rights of the states." The phrase, "wholly apart from that question," begs the real question at issue.

the states in the Union. Furthermore, it is a mistake to assume that every growth of national power is at the expense of state power. While it is true that we have more government at the federal level today than ever before, we also have much more state government. A fuller exploitation by Congress of the powers committed to it by the Constitution has been matched by a fuller exploitation of the authority reserved to the states. The laments of losing litigants should not be taken as a correct assessment of the present position of the American states.

The teaching of the Supremacy Clause is that national policy, spelled out within the range of the delegated powers, is binding upon the states and their subdivisions as well as upon individuals and corporations. If states could escape the impact of national regulation because they are states, then by that measure the national government would not be supreme. So the Court ruled when it decided that a state, in selling timber located on school lands, was bound by the price ceilings authorized by the Emergency Price Control Act of 1942.[3] An exemption in favor of the states, the Court pointed out, "might result in depriving Congress of ability effectively to prevent the evil of inflation at which the Act was aimed. The result would be that the constitutional grant of the power to make war would be inadequate to accomplish its full purpose. And this result would impair a prime purpose of the Federal Government's establishment." Similarly, to provide a site for a postoffice and custom-house, the United States may take, by eminent domain, land which is held in trust and used by a city for public purposes.[4] The rule is the same where the federal government, in its control over navigation, builds a dam which floods land owned by a state, since "the fact that land is owned by a state is no barrier to its condemnation by the United States."[5] Furthermore, if the federal project interferes with a local program for water development, the state must bow before the "superior power" of Congress.

Since "the policy of the federal Act is the prevailing policy in every state," a unanimous Court recently held that a state court may not refuse to enforce a penal law of the United States when required to do so.[6] The notion that a state is no more obligated to enforce a federal penal law than it is to enforce a penal law of another state or a foreign country "flies in the face of the fact that the States of the Union constitute a nation," and

[3] Chase v. Bowles, 327 U. S. 92 (1946). OPA regulations were also held applicable to sales by counties. Hulbert v. Twin Falls County, 327 U. S. 103 (1946). Justice Douglas, dissenting alone, expressed concern over "substantial intrusions on the sovereignty of the States." Justice Douglas seems to have emerged as the outstanding defender of the concept of "state sovereignty" in the present Court.

[4] United States v. Carmack, 67 S. Ct. 252 (1946.)

[5] Oklahoma ex rel. Phillips v. Guy F. Atkinson Co., 313 U. S. 508, 534 (1941).

[6] Testa v. Katt, 67 S. Ct. 810 (1947).

disregards the purpose and effect of the Supremacy Clause. On the other hand, where Congress has given a federal court exclusive jurisdiction over questions arising under a particular statute, no state court may interfere with its administration.[7]

The principle of federal supremacy was at the core of the decision in Oklahoma v. United States Civil Service Commission,[8] which upheld the section of the Hatch Act providing that "no officer or employee of any state or local agency whose principal employment is in connection with any activity which is financed in whole or in part by loans or grants made by the United States or any federal agency shall . . . take any active part in political management or in political campaigns." If the Commission finds, after a hearing, that the facts warrant a removal, the state or local agency is notified, and if the removal is not made, the loans or grants available to the local agency are reduced. The Court said: "While the United States is not concerned and has no power to regulate local political activities as such of state officials, it does have power to fix the terms upon which its money allotments to states shall be disbursed. . . . The end sought by Congress through the Hatch Act is better public service by requiring those who administer funds for national needs to abstain from active political partisanship. So even though the action taken by Congress does have effect upon certain activities within the state, it has never been thought that such effect made the federal act invalid." The Court reached the same conclusion in affirming the binding quality of a federal statute which granted land and rights of way in two national parks to a city, for water and electricity purposes, on the condition that no private interest should be given the right to sell water or power derived from the grant.[9] The statutory condition "does not represent an exercise of a general control over public policy in a State."

Decisions in the field of foreign relations have amplified familiar doctrine. When the Soviet Union assigned all Russian claims against American nationals to the United States (the Litvinov Assignment of 1933), and the United States moved to take over a deposit account in a New York bank which had been among the assets of an expropriated Russian corporation, the Court held that whatever the policy of New York might be with regard to the enforcement of acts of confiscation, the deposit belonged

[7] Bowles v. Willingham, 321 U. S. 503 (1943). In conformity with Sec. 265 of the Judicial Code, and its policy of avoiding needless friction between state and federal courts, it is improper for a federal court to enjoin proceedings in a state court merely because the claim had previously been litigated in a federal court. Toucey v. New York Life Ins. Co., 314 U. S. 118 (1941), overruling as "a sporadic, ill-considered decision," Supreme Tribe of Ben Hur v. Cauble, 255 U. S. 356 (1921). On this point, see also Beal v. Missouri Pacific R. Corp., 312 U. S. 45 (1941); Watson v. Buck, 313 U. S. 387 (1941).

[8] 67 S. Ct. 544 (1947).

[9] United States v. San Francisco, 310 U. S. 16 (1940).

to the United States.[10] "Plainly," Justice Sutherland asserted, "the external powers of the United States are to be exercised without regard to state laws or policies. . . . In respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear." So also, when Congress enacted the Alien Registration Act in 1940, it intended to preëmpt the field and establish one uniform national registration system, thus nullifying a state alien registration law.[11] Furthermore, the Court recently ruled that title to land underlying the Pacific Ocean extending seaward three nautical miles from the ordinary low watermark is in the national government, not the state.[12] It was noted that the political agencies of the nation "both claim and exercise broad dominion and control over our three-mile marginal belt," and this assertion of national dominion is binding upon the Court. The protection and control of this belt "has been and is a function of national external sovereignty."

On the other hand, the Court is unwilling to invalidate state action when its impact upon matters of federal concern is not substantial. The New York Civil Rights Law, which provides, under penalty, that no labor organization shall deny a person membership or equal treatment by reason of race, color, or creed, was held applicable to an association of postal clerks of the United States railway service, whose rules limited membership to whites and native American Indians.[13] There was no interference with the mail service or the power of the government to conduct it. The New York labor law, as applied to a contractor building a postoffice on land ceded by the state to the United States, was declared valid, since the law did not interfere with any national purposes or interests.[14] Similarly, the Court found that a state price-fixing law for milk may be applied to a dairy having a contract with a federal military establishment located on land owned by the state, in the absence of any congressional expression of policy on the subject, since whatever burdens there may be on the federal government are but "the normal incidents of the operation within the same territory of a dual system of government."[15] But a different result was reached where a state attempted to enforce its milk price control law against a dairy selling to a military post located on land which had been ceded to the United States, and over which it therefore had exclusive jurisdiction.[16]

[10] United States v. Belmont, 301 U. S. 324 (1937). To the same effect is United States v. Pink, 315 U. S. 203 (1942).

[11] Hines v. Davidowitz, 312 U. S. 52 (1941).

[12] United States v. California, 67 S. Ct. 1658 (1947).

[13] Railway Mail Assoc. v. Corsi, 326 U. S. 88 (1945).

[14] James Stewart & Co. v. Sadrakula, 309 U. S. 94 (1940).

[15] Penn Dairies, Inc. v. Milk Control Comm. of Penna., 318 U. S. 261, 271 (1943).

[16] Pacific Coast Dairy v. Department of Agriculture, 318 U. S. 285 (1943). Nor may a state require licenses from liquor dealers in a national park which has been

On jurisdictional questions involving the right of states to sue and their liability to suit in courts beyond their control, the Court has taken a position favorable to the states. It has ruled that a state may bring an action in behalf of its people against a group of railroads under the Clayton Act, since the state is a "person" within the meaning of Section 16 of the Act, and there is no reason why a state should be restricted to suits brought for the protection of its own proprietary interests.[17] "Suits by a State, *parens patriae*, have long been recognized. . . . Georgia as a representative of the public is complaining of a wrong which, if proven, limits the opportunities of her people, shackles her industries, retards her development, and relegates her to an inferior economic position among her sister States. These are matters of grave public concern in which Georgia has an interest apart from that of particular individuals who may be affected. Georgia's interest is not remote; it is immediate."

Conversely, the Court has construed the Eleventh Amendment strictly in favor of the states in suits brought against them in the federal courts. The mere fact that a state has consented to suits against itself in its own courts, for the recovery of taxes, does not mean that it has also consented to suit in the federal courts.[18] "When a state authorizes a suit against itself to do justice to taxpayers who deem themselves injured by any exaction, it is not consonant with our dual system for the federal courts to be astute to read the consent to embrace federal as well as state courts." When dealing with the "sovereign exemption from judicial interference in the vital field of financial administration, a clear declaration of the state's intention to submit its fiscal problems to other courts than those of its own creation must be found." It follows that where a provision in a state law permits suit to recover taxes paid under protest "in any court of competent jurisdiction," it does not authorize suit in a federal court because consent has not been indicated with sufficient clarity.[19] And the fact that the state's attorney-general argued a case at the trial level on its merits, without raising the jurisdictional issue, does not constitute a waiver of the state's immunity; for such is the compelling force of the policy of the

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ceded by the state to the federal government. Collins v. Yosemite Park and Curry Co., 304 U. S. 518 (1938).

[17] Georgia v. Pennsylvania R. Co., 324 U. S. 439 (1945). Four justices dissented, arguing that as to the Clayton Act the federal government is *parens patriae*, not the states. See also Georgia v. Evans, 316 U. S. 159 (1942), holding that a state may sue for triple damages under the Sherman Act.

[18] Great Northern Life Ins. Co. v. Read, 322 U. S. 47 (1944). Three judges dissented, taking the view that the majority opinion "derives from an excessive regard for formalism," and departs from the whole modern trend in favor of suability.

[19] Kennecott Copper Corp. v. State Tax Comm. of Utah, 327 U. S. 573 (1946).

Eleventh Amendment that the Supreme Court will consider the issue, even though it is raised there for the first time.[20]

In a broader sense, the present Court has tried to avoid using the general language of the Constitution, and particularly that of the Fourteenth Amendment, to compress state power within federally defined limits. In a very recent case upholding the constitutionality of the New York "blue ribbon" jury system, the Court emphasized the fact that basically the administration of justice is a local responsibility, and it refused to use the "cryptic words" of the Fourteenth Amendment "to impose uniform procedures upon the several states."[21] Justice Jackson declared that the Court's policy has been one of self-restraint, and that it "will not use this great centralizing Amendment to standardize administration and stagnate local variations in practice." Similarly, the Court recently reaffirmed the rule of the Twining case,[22] that self incrimination, in the form of comment on the failure of a defendant to testify in his own behalf, is outside the scope of both the privileges and immunities and due process clauses of the Fourteenth Amendment.[23] Justice Reed asserted that this interpretation "accords with the constitutional doctrine of federalism by leaving to the states the responsibility of dealing with the privileges and immunities of their citizens except those inherent in national citizenship. . . . It is the construction placed upon the amendment by justices whose own experience had given them contemporaneous knowledge of the purposes that led to the adoption of the Fourteenth Amendment. This construction has become embedded in our federal system as a functioning element in preserving the balance between national and state power." In other words, the present Court has continued the tradition, in this and other cases,[24] of holding that the Fourteenth Amendment was

[20] Ford Motor Co. v. Department of Treasury of Indiana, 323 U. S. 459 (1945). This tenderness for the states is in contrast with the present Court's more general tendency of looking with disfavor upon claims to immunity from suit, even on the part of federal agencies. See Keifer & Keifer v. RFC, 306 U. S. 381 (1939); Federal Housing Administration v. Burr, 309 U. S. 242 (1940). This is also reflected in the Federal Tort Claims Act, Title IV of the Legislative Reorganization Act of 1946. See "Government Tort Liability," *Law and Contemporary Problems*, Vol. 9, pp. 179–370 (1942). Where the United States itself has consented to be sued, however, the terms of this consent are interpreted strictly in favor of the United States. United States v. Sherwood, 312 U. S. 584 (1941).

[21] Fay v. New York, 67 S. Ct. 1613, 1631 (1947).

[22] Twining v. New Jersey, 211 U. S. 78 (1908).

[23] Adamson v. California, 67 S. Ct. 1672 (1947).

[24] See Madden v. Kentucky, 309 U. S. 83 (1940), overruling Colgate v. Harvey, 296 U. S. 404 (1935); Hague v. C.I.O., 307 U. S. 496 (1939); Snowden v. Hughes, 321 U. S. 1 (1944); Screws v. United States, 325 U. S. 91 (1945); Breedlove v. Suttles, 302 U. S. 277 (1937); Edwards v. California, 314 U. S. 160 (1941); United

not intended to alter the basic pattern of American federalism. The Court also continues to adhere to the view that the due process clause of that amendment did not absorb all of the guarantees of the first eight, but only those which are "of the very essence of a scheme of ordered liberty."[25]

While the national and state governments are, for some purposes, separate and distinct entities,[26] the Court has supported the current drift toward "coöperative federalism," according to which it is possible for the national and local authorities to work together in the solution of common problems. These governments, in this view, are not necessarily antagonistic units dealing with each other at arm's length, as is customary among sovereign national states. One important recent example of "coöperative federalism" is found in the Court's validation of the Ashurst-Sumners Act of 1935, which forbids the shipment of goods made by convict labor into any state where the goods are to be possessed, sold, or used contrary to its laws.[27] Congress may shape its policy in the light of the fact that the transportation in question, if permitted, will aid in the frustration of valid state laws. Another example is the decision which sustained the Municipal Bankruptcy Act of 1937, which authorizes the political subdivisions of a state, with the latter's consent, to seek relief under the federal bankruptcy power.[28] Far from invading state sovereignty, the statute confirmed it, since "it is of the essence of sovereignty to be able to make contracts

States v. Classic, 313 U. S. 299 (1941). See M. R. Konvitz, *The Constitution and Civil Rights* (1947), Chap. 3.

[25] Palko v. Connecticut, 302 U. S. 319, 325 (1937). Compare Louisiana ex rel. Willie Francis v. Resweber, 67 S. Ct. 374 (1947), with Chambers v. Florida, 309 U. S. 227 (1940), and Johnson v. Zerbst, 304 U. S. 458 (1938), with Betts v. Brady, 316 U. S. 455 (1942), and Foster v. Illinois, 67 S. Ct. 1716 (1947).

[26] Thus is it not improper, in a federal trial for using the mails to defraud, to admit testimony previously given by the defendant in supplementary proceedings in a state court under a statute granting immunity. Feldman v. United States, 322 U. S. 487 (1944). This is an interesting variation on the rule of Ponzi v. Fessenden, 258 U. S. 254 (1922), that federal incarceration is no bar to trial in a state court, and the rule of United States v. Murdock, 284 U. S. 141 (1931), which holds that one may not decline to testify in federal court on the ground that it may incriminate him under state law.

[27] Kentucky Whip & Collar Co. v. Illinois Central R. Co., 299 U. S. 334 (1937). This case carried forward the doctrine of Whitfield v. Ohio, 297 U. S. 431 (1936). See J. E. Kallenbach, *Federal Coöperation with the States under the Commerce Clause* (1942).

[28] United States v. Bekins, 304 U. S. 27 (1938). The Court previously invalidated the 1934 version of the same statute in Ashton v. Cameron County Water Improvement Dist., 298 U. S. 513 (1936). Since the two statutes were practically identical, a curious feature of the Bekins case was that instead of overruling the earlier decision, the Court made a feeble effort at distinguishing them. A year ago, however, Justice Rutledge remarked, in Prudential Ins. Co. v. Benjamin, 328 U. S. 408, 433, note 42 (1946), that the Ashton case "may be said in effect to have been overruled" by the Bekins case.

and to give consents." And the Court added: "Nor did the formation of an indestructible Union of indestructible States make impossible coöperation between the Nation and the States through the exercise of the power of each to the advantage of the people who are citizens of both."

Still another conspicuous example of federal-state coöperation in a common plan is found in the unemployment compensation section of the Social Security Act of 1935, under which the national government allows a ninety per cent credit to employers who pay state taxes to a state unemployment insurance system which meets certain federal standards, and under which the federal government pays the state's administrative expenses. The Court held that the statutory scheme does not coerce the states in the constitutional sense, for it is incorrect to confuse motive with coercion, and to say that since they are tempted the states have been coerced.[29] The law is guided, Justice Cardozo noted, "by a robust common sense which assumes the freedom of the will as a working hypothesis," and not by "a philosophical determinism by which choice becomes impossible." In fact, the very circumstance that all states are brought into the plan means that the states which wish to have unemployment insurance are more and not less free to do so. Furthermore, the conditions which the state meets are not embodied in a contract, but in a statute which the state is at liberty to repeal. But granting *arguendo* that there is a contractual relationship, "even sovereigns may contract without derogating from their sovereignty."

II

A decision of immense significance for the whole pattern of national-state relations, and "in some respects one of the most remarkable in the Court's history,"[30] was handed down in 1938 in the case of Erie Railroad Co. v. Tompkins.[31] This case overruled Swift v. Tyson,[32] wherein the rule was established that in diversity of citizenship cases which involve issues of general commercial law—the question not being one of peculiarly local law and interest, and there being no state statute on the subject—the federal courts may determine for themselves what the law is, independently of the judge-made common law rules of the state. In other words, the Rules of Decision Act of 1789,[33] which directed the federal courts to follow "the laws" of the several states, was regarded not as a rule of imperative constitutional necessity, but as essentially one of comity. Speak-

[29] Steward Machine Co. v. Davis, 301 U. S. 548 (1937).

[30] Robert H. Jackson, *The Struggle for Judicial Supremacy* (1941), p. 272.

[31] 304 U. S. 64. [32] 16 Pet. 1 (1842).

[33] "The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply." Act of September 24, 1789, c. 20, §34, 1 Stat. 92., now §721 of the Revised Statutes.

ing for the Court, Justice Brandeis summarized the objections to the century-old rule of the Tyson case. He pointed out that it did not promote uniformity, as often alleged, since the state courts persisted in their own opinions on questions of common law, as they had a right to do. Furthermore, "the impossibility of discovering a satisfactory line of demarcation between the province of general law and that of local law developed a new well of uncertainties." Above all, "Swift v. Tyson introduced grave discrimination by non-citizens against citizens. It made rights enjoyed under the unwritten 'general law' vary according to whether enforcement was sought in the state or in the federal court; and the privilege of selecting the court in which the right should be determined was conferred upon the non-citizen. Thus, the doctrine rendered impossible equal protection of the law."[34] The Court held that, except in matters governed by the Constitution or acts of Congress, the law which should be applied in any diversity case is the law of the state, and that whether the law is declared by its legislature in a statute or by its highest court in a decision, is not a matter of federal concern, "for there is no federal general common law." But Justice Brandeis was not content merely to argue that the Rules of Decision statute had been misconstrued by the courts; he went on to say that Congress "has no power to declare substantive rules of common law applicable in a State whether they be local in their nature or 'general,' be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts." Hence it follows that the rule of Swift v. Tyson is not merely mistaken, but also unconstitutional, since it invades the reserved powers of the states. While the point made by Justice Reed, in his concurring opinion, that the Court was unnecessarily foreclosing an issue of constitutional power, is a cogent one, the Court is now firmly attached to the new position. An important element of state power was decisively reaffirmed.

Decisions since 1938 have contributed a considerable gloss to the obligation of the federal courts to apply state-made common law in diversity cases. The Rules of Decision statute was quickly extended to include equity cases.[35] A federal circuit court, upon appeal from a judgment of a district court, must apply the law declared by the highest court of the state, as of the time when the appeal is disposed of, not as of the time when the judg-

[34] The consequences following from the fact that a party could shop around for a rule of law were dramatically illustrated in Black & White Taxicab Co. v. Brown & Yellow Taxicab Co., 276 U. S. 518 (1928). Justice Holmes wrote a vigorous dissenting opinion, in which he maintained that parties are not entitled to any independent judgment on matters of general law because there is no such "transcendental body of law outside of any particular State." Another noteworthy dissenting view was expressed by Justice Field in Baltimore & Ohio R. Co. v. Baugh, 149 U. S. 368, 390 (1893).

[35] Ruhlin v. New York Life Ins. Co., 304 U. S. 202 (1938).

ment below was entered.[36] "Until such time as a case is no longer *sub judice*, the duty rests upon federal courts to apply state law under the Rules of Decision statute in accordance with the then controlling decision of the highest state court. Any other conclusion would but perpetuate the confusion and injustices arising from inconsistent federal and state interpretations of state law."[37] Furthermore, while the highest state court is the final authority on state law, it is the duty of federal courts, where state law supplies the rule of decision, to ascertain and apply that law even if it has not been expounded by the state's highest court; an intermediate court is an organ of the state, and in the absence of more convincing evidence of what the state law is, it should be followed by a federal court in deciding a state question.[38] Nor may a federal court decline to exercise its jurisdiction on the ground that the decision turns on rules of state law which are uncertain or difficult to determine; the Tompkins case did not free the federal courts from the duty of deciding questions of state law in diversity cases, but, on the contrary, placed upon them a greater responsibility for determining and applying that law.[39]

There are, however, some exceptions to the rule of the Tompkins case, and to some extent it may be said that there still is a sort of federal common law. In suits brought under a federal statute or involving the interpretation or application of a federal statute, federal courts do not act as state courts, in diversity cases, and are therefore independent of state rules. Thus, where the defense to a suit for alleged breach of the price-maintenance provisions in a patent-license contract is the invalidity of the patent under the Sherman Act, the issue must be decided without reference to the state rule of estoppel; for the doctrine of the Tompkins case is "inapplicable to those areas of judicial decision within which the policy of the law is so dominated by the sweep of federal statutes that legal relations which they affect must be deemed governed by federal law having its source in those statutes, rather than by local law."[40]

[36] Vandenbark v. Owens-Illinois Glass Co., 311 U. S. 538 (1941); Huddleston v. Dwyer, 322 U. S. 232 (1944). See also Wichita Royalty Co. v. City National Bank, 306 U. S. 103 (1939); Moore v. Illinois Central R. Co., 312 U. S. 630 (1941).

[37] Vandenbark v. Owens-Illinois Glass Co., 311 U. S. at 543.

[38] Fidelity Union Trust Co. v. Field, 311 U. S. 169 (1940). Here the Court held that the rulings of the New Jersey Court of Chancery must be followed, even though they are reviewable by the Court of Errors and Appeals. To the same effect are: Six Companies of California v. Joint Highway District, 311 U. S. 180 (1940); West v. American Telephone & Telegraph Co., 311 U. S. 223 (1940); Stoner v. N. Y. Life Ins. Co., 311 U. S. 464 (1940).

[39] Meredith v. Winter Haven, 320 U. S. 228 (1943). But in the absence of any relevant decision by the state courts, the Supreme Court will leave undisturbed an interpretation of purely local law by inferior federal courts. MacGregor v. State Mutual Life Assurance Co., 315 U. S. 280 (1942).

[40] Sola Electric Co. v. Jefferson Electric Co., 317 U. S. 173, 176 (1942). An inter-

Finally, the rule of the Tompkins case applies only to questions of substantive law and not to procedure. It is noteworthy that the new Federal Rules of Civil Procedure, adopted by the Supreme Court under statutory authorization, became effective September 16, 1938, four months after the Tompkins adjudication. The inconsistency between requiring conformity with local law as to substantive matters, while prescribing uniformity in procedure, is more apparent than real. The Tompkins rule is designed to make certain that two courts in the same jurisdiction will decide cases according to the same legal principles. At the same time, it is desirable that the federal courts should be free to control their own procedures, according to their own uniform rules, and their own conceptions of the fair and efficient administration of justice.[41] The language of the Rules of Decision statute itself, it should be recalled, requires federal courts to follow state law "except where the Constitution, treaties, or statutes of the United States otherwise require or provide." This distinction, however, between substance and procedure, although justifiable, has created new uncertainties, for "in practice there is but a shadowy line" between them.[42] The issue has already arisen, to cite an example, with reference to the method of pleading contributory negligence, as to which state courts differ. After some fumbling in the lower courts, the Supreme Court finally ruled that questions of the burden of proof relate to substantive rights and are therefore governed by state law.[43] The Court has also decided that conflicts of law rules[44] and statutes of limitations[45] are matters of substantive law. Recently the Court ruled that a state statute which denies to all state courts jurisdiction over a particular cause of action is substantive, and, if constitutional, prevents federal courts sitting in that state from exercising jurisdiction.[46]

On the other hand, the Supreme Court has decided that Rule 35 of the new Rules of Civil Procedure, which provides that, in a suit in which the

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esting application of this rule will be found in United States v. Standard Oil Co. of Calif., 67 S. Ct. 1604 (1947). See Note, "Exceptions to Erie v. Tompkins: The Survival of Federal Common Law," *Harvard Law Review*, Vol. 59, p. 966 (July, 1946).

[41] See Alexander Holtzoff, "The Federal Rules of Civil Procedure and Erie Railroad Co. v. Tompkins," *Journal of the American Judicature Society*, Vol. 24, p. 57 (Aug., 1940).

[42] Charles E. Clark, "The Tompkins Case and the Federal Rules," *Journal of the American Judicature Society*, Vol. 24, pp. 158, 159 (Feb., 1941).

[43] Cities Service Oil Co. v. Dunlap, 308 U. S. 208 (1939); Palmer v. Hoffman, 318 U. S. 109 (1943).

[44] Griffin v. McCoach, 313 U. S. 498 (1941); Klaxon Co. v. Stentor Electric Mfg. Co., 313 U. S. 487 (1941). The law of the forum must control.

[45] Guaranty Trust Co. v. York, 326 U. S. 99 (1945), as to equity cases; the rule is an old one for cases at law.

[46] Angel v. Bullington, 67 S. Ct. 657 (1947). Three justices thought that this was a matter of procedure.

physical or mental condition of a party is in controversy, the court may order him to submit to an examination by a physician, was within the authority granted by Congress to prescribe procedural rules for the United States District Courts in civil actions, and consistent with the limitation that the rules prescribed "shall neither abridge, enlarge, nor modify the substantive rights of any litigant."[47] If the rule really regulates procedure, then its importance is immaterial; otherwise, "we should invite endless litigation and confusion worse confounded."

The Tompkins case has greatly stengthened the position of the states in the American federal system, by heightening the stature of the state courts and in some measure lowering that of the inferior federal courts. "The essence of diversity jurisdiction," Justice Frankfurter recently reminded us, "is that a federal court enforces State law and State policy."[48] It has abolished the anomaly of two courts sitting in the same jurisdiction and dispensing justice according to different substantive rules of law.[49] It has brought within the ambit of the Rules of Decision statute the range of state law originally designed to be there.[50] It has removed the "well of uncertainties" arising from the necessity of drawing a line between general and local law. But since they must now distinguish between substance and procedure, the courts have stumbled upon another "well of uncertainties." It is, of course, not unusual in the history of law to discover that the price paid for the solution of one problem is the creation of a new one. The ever-growing flood of cases and law review articles dealing with the Tompkins rule indicates that, in the words of a distinguished scholar and judge, "it has suggested at least as many questions as it has answered."[51]

III

During the past ten years, the Supreme Court has given an unusual amount of attention to that hardy perennial of federalism, the problem of intergovernmental tax immunities. Nevertheless, though much progress has been made, the judges have not yet worked out a consistent theory

[47] Sibbach v. Wilson & Co., 312 U. S. 1 (1941). Four justices dissented, apparently taking the view that not all of the new rules of procedure were procedural.

[48] Angel v. Bullington, 67 S. Ct. at 662.

[49] In 1814, Justice Bushrod Washington, sitting at circuit, used such strong words as "injustice," "absurdity," and "monstrous" to describe this anomaly. Golden v. Prince, 3 Wash. C. C. 313, 10 Fed. Cas. 542.

[50] Charles Warren, "New Light on the History of the Federal Judiciary Act of 1789," *Harvard Law Review*, Vol. 37, p. 49 (1923). Justice Brandeis attached a great deal of importance to this research. Warren discovered that Ellsworth's original draft of the Rules of Decision Act referred to both "the statute law" of the states and "their unwritten or common law," and that later on the whole statement was shortened by substituting for these two phrases the word "laws."

[51] Charles E. Clark, "State Law in the Federal Courts; The Brooding Omnipresence of Erie v. Tompkins," *Yale Law Journal*, Vol. 55, pp. 267, 269 (Feb., 1946).

which all of them can accept. In one of the most recent cases, the only thing a majority of the Court agreed upon at all was the judgment; the six justices who made up the majority advanced three different theories in as many opinions, and two dissenting judges presented a fourth view.[52] With respect to the state's power to tax national instrumentalities, a considerable measure of clarity has been achieved because of the relative simplicity of the doctrine of federal supremacy. This guarantees that the will of Congress prevails when expressed within the range of its delegated and implied powers. The initial inquiry, therefore, is to discover whether Congress has expressed its will; for Congress may endow the agencies which it creates with any legal qualities it wishes to, so far at least as the state's taxing power is concerned. Clearly, the states may tax any federal instrumentality with the consent of Congress.[53] Conversely, where Congress has expressly stipulated exemption from local taxation, such taxation is precluded. There is no case where local taxation of national instrumentalities has been sanctioned by the Court in the face of a specific exemption by Congress. Furthermore, the distinction between governmental and proprietary activities, which still applies to state functions, does not hold for those of the national government. No federal function has ever been held judicially to be other than governmental, even though comparable state functions have been construed to be proprietary in character. In 1939, the Supreme Court finally committed itself explicitly to the proposition that since the national government "derives its authority wholly from powers delegated to it by the Constitution, its every action within its constitutional power is governmental action, and since Congress is made the sole judge of what powers within the constitutional grant are to be exercised, all activities of government constitutionally authorized by Congress must stand on a parity with respect to their constitutional immunity from taxation."[54]

From all this it follows that, apart from questions of statutory interpretation,[55] the major area of controversy is found in the rather large number of situations where Congress has been silent on the subject of immunity from local taxation. It is now clear that the silence of Congress is not necessarily either an invitation to tax or a prohibition of taxation; the real

[52] New York v. United States, 326 U. S. 572 (1946).

[53] For an application of the well-established statutory rule that national banks are subject to non-discriminatory local taxation, see Tradesmens National Bank v. Oklahoma Tax Comm., 309 U. S. 560 (1940). A recent example is the Public Salary Tax Act of 1939 (53 Stat. 574), which permits the non-discriminatory taxation of the salary of any federal officer or employee by the states. See also Public Law 279, 80th Cong., 1st Sess., c. 389, §§104–7.

[54] Graves v. New York *ex rel.* O'Keefe, 306 U. S. 466, 477 (1939).

[55] For examples, see Pittman v. HOLC, 308 U. S. 21 (1939); Federal Land Bank v. Bismarck Lumber Co., 314 U. S. 95 (1941); RFC v. Beaver County, 328 U. S. 204 (1946).

criterion is found in considering "the nature and effect of the alleged burden."[56] Here is the area of creative decision.

In recent years, the Court has exhibited a laudable tendency to decide cases realistically, without regard to what Lincoln called "pernicious abstractions." Overturning a doctrine dating from 1842, and reaffirmed as late as 1937,[57] the Court ruled in 1939 that a federal employee was not free from the obligation of paying a non-discriminatory state income tax.[58] Since the immunity claimed by the taxpayer was not specified in a statute, the Court was of the opinion that none should be recognized, because the tax imposed no economic burden on the government. "The theory, which once won a qualified approval, that a tax on income is legally or economically a tax on its source, is no longer tenable." Whatever burden there may be is but the normal incident of a federal system, and if the government is affected in any indirect or incidental way, the burden "is one which the Constitution presupposes." Similarly, the Court once ruled that lessees of mines or oil wells on restricted Indian lands were immune from local occupation, capital stock, ad valorem, and income taxes, on the theory that they were federal instrumentalities.[59] In 1938, the Court overruled the earlier cases creating the immunity, holding that an income tax on the lessees of government lands, if "substance and direct effects" are considered, is not an unconstitutional burden on the lessor.[60] It has also sustained a non-discriminatory state privilege tax on gross receipts, an occupation tax on gross income, and a personal income tax on net income of contractors with the government.[61] The Court thought that the burden of this taxation upon the federal government, if any exists at all, is remote and indirect, that the cost to the government is not inevitably increased, since the contractor may absorb the tax, and that in any event taxes should be reckoned as a part of the expense of doing the work. A state may also collect its unemployment insurance tax from one conducting a business in a national park, even though the federal Social Security Act

[56] Graves v. New York *ex rel.* O'Keefe, 306 U. S. at 480.

[57] Dobbins v. Commissioner, 16 Pet. 435; New York *ex rel.* Rogers v. Graves, 299 U. S. 401.

[58] Graves v. New York *ex rel.* O'Keefe, *supra*, note 54. To the same effect is State Tax Comm. v. Van Cott, 306 U. S. 511 (1939). Of course, with the enactment of the Public Salary Tax Act of 1939, this issue has been put to rest, so far as any problem of judicial construction is concerned.

[59] The principal case was Gillespie v. Oklahoma, 257 U. S. 501 (1922). The immunity was progressively whittled down through the discovery of exceptions and distinctions. For example, a tax on the lessee's buildings and machinery was sustained in Taber v. Indian Territory Illuminating Oil Co., 300 U. S. 1 (1937).

[60] Helvering v. Mountain Producers Corp., 303 U. S. 376.

[61] James v. Dravo Contracting Co., 302 U. S. 134 (1937); Silas Mason Co. v. Tax Comm., 302 U. S. 186 (1937); Atkinson v. State Tax Comm., 303 U. S. 20 (1938).

exempts "an instrumentality of the United States"; for one who conducts a private business under a lease with the government is not such an instrumentality.[62] A state may levy its sales tax on the purchase of materials by contractors for use in performing cost-plus contracts with the United States.[63] A state may also apply its ad valorem personal property tax to a contractor's open account claim against the United States, since the claim is not a credit instrumentality of the federal government within the meaning of the constitutional immunity; the taxation of an unliquidated creditor's claim, unlike the taxation of interest-bearing bonds, will not affect or embarrass in any substantial measure the power of the United States to secure credit.[64]

On the other hand, the Court has invalidated state taxation where it finds that there is a direct charge or burden on the federal government. A state inspection fee imposed on commercial fertilizers was held inapplicable to fertilizers distributed by the United States under the Soil Conservation and Domestic Allotment Act, for, since the fees were levied directly on the United States, they constitute a money exaction which is prohibited by the Supremacy Clause.[65] Since the freedom of federal functions from state control is "inherent in sovereignty," in the silence of the Congress, "the inherent freedom continues." A state may not tax sales of gasoline to army post exchanges, since, "as now operated," they "are arms of the Government deemed by it essential for the performance of governmental functions."[66] Nor may a state tax machinery leased to a war contractor, where title remained in the United States under a contract in which the government agreed to pay any tax which the contractor would be compelled to pay to any local government, the local definition of what constitutes realty being immaterial.[67] But local property taxes may be collected from one who buys realty from the United States under an executory contract of sale, according to which the fee title remains with the United States until the last instalment is paid, and under which the United States may repossess the property if the terms of the contract are not met.[68] Since the state law was authoritatively construed by the state

[62] Buckstaff Bath House Co. v. McKinley, 308 U. S. 358 (1939).

[63] Alabama v. King & Boozer, 314 U. S. 1 (1941). The same rule was announced as to state use taxes in Curry v. United States, 314 U. S. 14 (1941). These cases overruled Panhandle Oil Co. v. Mississippi, 277 U. S. 218 (1928), and Graves v. Texas Co., 298 U. S. 393 (1936). In Wilson v. Cook, 327 U. S. 474 (1946), the Court held that a state could constitutionally collect a severance tax on timber cut on a United States forest reserve under contract with the federal government.

[64] Smith v. Davis, 323 U. S. 111 (1944). "The assets of an independent contractor that are derived from the profits of a government contract stand in no preferred constitutional position so far as taxation is concerned. They, too, must bear their fair share of the tax burden." [65] Mayo v. United States, 319 U. S. 441 (1943).

[66] Standard Oil Co. of Calif. v. Johnson, 316 U. S. 481, 485 (1942).

[67] United States v. County of Allegheny, 322 U. S. 174 (1944).

[68] S. R. A. v. Minnesota, 327 U. S. 558 (1946). A state may not tax lands ac-

court as not affecting the fee of the United States, "the paramount rights" of the federal government were fully protected.

As to the other side of this problem, the federal taxation of state instrumentalities, a considerable measure of confusion still remains. This is due largely to the fact that the judges have not yet agreed on the meaning of the puzzling concept, "state sovereignty." As a matter of fact, the states are not "sovereign" at all; to paraphrase Chief Justice Chase, a "sovereign union of sovereign states" is a contradiction in terms. So long as the judges insist, however, upon regarding the states as being, in some fashion, "sovereign," they will continue to discover some point where the impact of the national taxing power upon the states violates an immunity which is implied from their position in the federal union.

Some fifty years after the Court established the immunity of federal instrumentalities from state taxation,[69] the immunity was made reciprocal in Collector v. Day,[70] on the theory that "the exemption rests upon necessary implication, and is upheld by the great law of self-preservation." In the Pollock case,[71] the immunity was extended to the interest derived from state and local bonds. Indeed, as late as 1932, the Court held that a lessee of state school lands, a private corporation engaged in business for profit, was immune from federal taxation.[72] Since many of the exemptions were obviously unjustified—for the burden on government was wholly speculative, and often non-existent altogether—a process of distinction, limitation, and overruling has steadily reduced the area of immunity. There is not a great deal left today.

One of the great weapons used by the Court in this endeavor has been the rule of South Carolina v. United States,[73] that when a state enters "an ordinary private business" (liquor business in this instance), there can be no immunity, since only "governmental" as distinguished from "proprietary" state functions are beyond the reach of the national taxing power. Of course this distinction is as unknown to the Constitution as the immunity itself. The South Carolina rule is a difficult one to apply, however, since there is no agreed formula for distinguishing between "governmental" and "proprietary" functions. The cases suggest such tests as "strictly" governmental, "traditional," "usual," "indispensable," or "essential"—obviously rather vague terms. During the period under review, the Court ruled that a waterworks is a governmental function,[74] while on the other

quired by the United States for a housing project. Cleveland v. United States, 323 U. S. 329 (1945). Nor may it enforce a tax lien on land as long as the United States holds the title. United States v. Alabama, 313 U. S. 274 (1941).

[69] McCulloch v. Maryland, 4 Wheat. 316 (1819).

[70] 11 Wall. 113 (1870). Here Justice Bradley wrote a dissenting opinion the argument of which has never been improved upon.

[71] Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429, 158 U. S. C01 (1895).

[72] Burnet v. Coronado Oil & Gas Co., 285 U. S. 393 (1932).

[73] 199 U. S. 437 (1905).

[74] Brush v. Commissioner, 300 U. S. 352 (1937).

hand, a college football contest is proprietary.[75] It would be interesting to see whether a Byzantine theologian could discover any genuine distinction between the two cases.

The whole problem of interpretation implicit in the South Carolina rule came to an extraordinary boil, in 1946, in New York v. United States.[76] Here the Court decided that the state of New York, in the sale of mineral waters taken from Saratoga Springs, owned and operated by the state, is not immune from a federal gallonage tax. New York had sought immunity on the ground that this was "a usual, traditional, and essential governmental function." The case was argued, and later reargued, before the Supreme Court by an unusually long and impressive list of lawyers, and forty-five states joined New York as *amici curiae*. Six judges concurred in the judgment of the Court and two dissented, and the variety of theories presented in four different opinions points up the confusion of thought still persisting in this branch of public law.

In an opinion which Justice Rutledge joined, Justice Frankfurter maintained that this case is clearly governed by the South Carolina precedent, since he could see "no reason for putting soft drinks in a different constitutional category from hard drinks." He reviewed the previous efforts of the Court to find an intelligible criterion for distinguishing between governmental and non-governmental functions, and concluded that the attempt has been a sterile one.[77] He felt that about all a court is prepared to do, or should do, is to inquire into the presence or absence of discrimination. This would not lead to the taxation of a statehouse or state tax income, because "these inherently constitute a class by themselves. Only a State can own a statehouse; only a State can get income by taxing. These could not be included for purposes of federal taxation in any abstract category of taxpayers without taxing the State as a State." In his concurring opinion, Justice Rutledge added that with the passing of the former broad immunity, before a federal tax is applied to activities carried on directly by the states, it might be wise to insist that "the intention of Congress to tax them should be stated expressly and not drawn merely from the general wording of the statute applicable ordinarily to private sources of revenue." He gravely doubted that when Congress taxed every "person" selling mineral water it intended to tax states.

[75] Allen v. Regents, 304 U. S. 439 (1938). [76] 326 U. S. 572.

[77] Apart from the lack of any intelligible criterion, the distinction between "governmental" and "proprietary" functions is wholly illogical. How can a government ever act non-governmentally? But the problem goes beyond mere logic, for it is dangerous to make the concession that a state in some capacity may divest itself of the qualities which make it a state, and, in the language of the cases, become a "mere trader." If a state may shed its juristic quality, and become a private enterpriser, then it is free to act as one. The danger is not purely theoretical; see for example, Heim v. McCall, 239 U. S. 175 (1915).

In another concurring opinion, with which Justices Reed, Murphy, and Burton were in agreement, Chief Justice Stone argued that he was not prepared to say that the only test is whether or not the tax is discriminatory. Even a non-discriminatory tax, he maintained, may "so affect the State, merely because it is a State that is being taxed, as to interfere unduly with the State's performance of its sovereign functions of government."[78] For example, a non-discriminatory federal real estate tax (apportioned) or an income tax could hardly be applied constitutionally to the State's capitol, its statehouse, its public school buildings and parks, or its revenues from taxes and school lands. "If it be said that private citizens do not own statehouses or public school buildings or receive tax revenues, it may equally be said that private citizens do not conduct a State-owned liquor business or derive revenue from a State-owned athletic field." It is enough to say in this case that the subject of taxation has been "traditionally" within the national taxing power, that the tax bears alike upon states and citizens, and "does not unduly impair the State's functions of government."

Justice Douglas, with whom Justice Black concurred, wrote a dissenting opinion, the main point of which was that South Carolina v. United States should be overruled. He argued that "a State's project is as much a legitimate governmental activity whether it is traditional, or akin to private enterprise, or conducted for profit." If the Court adopts the rule that any federal tax on any state activity is valid unless it is discriminatory, "then a constitutional rule would be fashioned which would undermine the sovereignty of the States as it has been understood throughout our history." The balance between the nation and the states cannot rely for its protection on the will of a transient majority of Congress; the Constitution was designed to keep the balance "outside the field of legislative controversy." While it is true that upon entering the Union the states surrendered "some of their sovereignty," nevertheless " the Constitution is a compact between sovereigns," and "the power of one sovereign to tax another is an innovation so startling as to require explicit authority if it is to be allowed. If the power of the federal government to tax the States is conceded, the reserved power of the States guaranteed by the Tenth Amendment does not give them the independence which they have always been assumed to have. They are relegated to a more servile status."[79]

[78] On this point, see James A. Maxwell, *The Fiscal Impact of Federalism in the United States* (1946), Chap. 16, and compare with *Federal, State, and Local Government Fiscal Relations*, 78th Cong., 1st Sess., Sen. Doc. 69, especially Chap. 4.

[79] Since the term "sovereignty" is one of the fuzziest in the whole vocabulary of public law, judges should, if they insist upon using it, define what they mean by it. Does Justice Douglas have in mind John Austin's conception of "sovereignty" or Harold Laski's, Daniel Webster's, or John C. Calhoun's? The statement, at this late date, that "the Constitution is a compact between sovereigns" seems to be a rather

The Court has also refused immunity where the tax imposes no demonstrable burden on the local government. This is illustrated in the refusal of the Court to regard as non-taxable independent contractors and other persons whose incomes are derived from some sort of contractual relationship with a local government.[80] Thus, immunity was denied a few years ago to persons employed by several states to liquidate insolvent banks and other corporations, their compensation being derived from the assets of the insolvent enterprises.[81] Similarly, the Court has overruled earlier cases which established an immunity for lessees of state school lands, holding that it cannot be supported by "merely theoretical conceptions of interference with the functions of government," and that the effect upon the state is "indirect and remote."[82]

It remains to be noted that the salaries of state and local officials and employees have been brought within the range of the federal taxing power. In Helvering v. Gerhardt,[83] the Supreme Court held that the salaries of several employees of the Port of New York Authority were taxable. The Court did not overrule Collector v. Day, as Justice Black urged in his concurring opinion, but it did limit that case very narrowly to its own facts. Setting forth "cogent reasons" for keeping the implied restrictions on the national taxing power at a minimum, the Court felt that the advantage to the state of holding these salaries tax-exempt is theoretical speculative, unsubstantial, and unnecessary for its continued existence. Finally, the last step was taken in the following year, in the O'Keefe case,[84] wherein Collector v. Day was specifically overruled. Here the Court refused to extend exemption from state taxation to an employee of the Home Owners' Loan Corporation. In the light of this, as well as other, recent decisions, the implied immunity of state and local employees collapsed altogether.

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inaccurate and even irreverent gloss on a great deal of American history. The fact is that the scope of the doctrine of "state sovereignty," whatever that may mean, ends where valid federal power begins, if the Supremacy Clause has any meaning at all. Every power of the national government is necessarily an invasion of some right or power which the once-sovereign states had before the adoption of the Constitution. Is it not rather late in the day to say that a federal statute, coming within the range of delegated power, becomes invalid because it invades a "sovereignty" the invasion of which was essential if there was to be a national government in the first place?

[80] The leading case on this point is Metcalf & Eddy v. Mitchell, 269 U. S. 514 (1926).

[81] Helvering v. Therrell, 303 U. S. 218 (1938).

[82] Helvering v. Mountain Producers Corp., 303 U. S. 376 (1938).

[83] 304 U. S. 405 (1938). Two judges took no part in the disposition of this case, one wrote a separate concurring opinion, and two dissented.

[84] Graves v. New York *ex rel.* O'Keefe, 306 U. S. 466 (1939). Justice Stone, who wrote the opinion in this case, took the lead in molding the law of intergovernmental tax immunities in its present form. See S. J. Konefsky, *Chief Justice Stone and the Supreme Court* (1945), Chap. 1.

II. SEPARATION AND DELEGATION OF POWERS

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Montesquieu may have been inaccurate in his description of the English system of government of his time and a poor prophet of the developments that were to take place in it, but he certainly proved an excellent forecaster of one of the major trends in American political development. Montesquieu believed that in order to safeguard liberty it was necessary to separate the powers of government and to vest them in legislative, executive, and judicial departments. When the framers of the Constitution of the United States vested the legislative, the judicial, and the executive powers of government in the three departments, they were doubtless following the ideas of Montesquieu as well as generalizing from the hard experiences of early state and Confederation years.

The doctrine that a department to which certain powers of government have been assigned may not grant them to another department and thus frustrate the principle of the separation of powers is often called the doctrine of the delegation of powers. This doctrine is a corollary of the doctrine of the separation of powers. It might also be thought of as a sanction of that doctrine.

To think of the doctrines of separation and delegation of powers without reference to their qualifications may give one a misleading idea of both Montesquieu and the American system of government, and it is important to remember that Montesquieu himself introduced the idea of checks and balances in his formulation of the doctrine of the separation of powers. He also seems to have anticipated the charge that a rigid separation would be unworkable. Practical observer and reformer that he was, he saw the necessity for making it possible to have the legislative and executive branches of government work together, and he believed that in his proposed system of government he not only had protected liberty, but had made it easy for the government to function effectively. In his discussion of the constitution of England, he stated that: "These three powers should naturally form a state of repose or inaction. But as there is a necessity for movement in the course of human affairs, they are forced to move, but still in concert."

Whether or not Montesquieu would have accepted the contribution of the Supreme Court toward the effective functioning of a governmental system operating under the doctrine of the separation of powers is not a question of first importance, but it is an interesting example of the manner in which the Court molds constitutional doctrines in an effort to maintain the same balance between liberty and governmental efficiency that Montesquieu was attempting to maintain.

Constitutional maxims may often be more easily understood if they are restated in the reverse of their customary formulation. One might restate the principle of the delegation of powers in the following manner: a power that has been assigned to one department may be given by it to another department if only a sufficient number of strings are attached to the delegation. By reserving certain controls over the exercise of the delegated power, the granting department may reasonably be said merely to have sought the assistance of the receiving department in the task of executing the power in question, and seeking aid is not to be confused with a surrender of a power. The Supreme Court seems to have taken this view of the doctrine, for it has permitted Congress to leave to the executive the determination of named events, the making of certain findings as to the existence of ascertainable facts, and the utilization of established standards and techniques. The Court has held that if Congress refers to bodies of experience (even judicial experience, such as in rate-making, in connection with reasonable rates), or recognizes skills or tests or procedures, the rule against delegating power has been satisfied. In instances of this type, the Court says that Congress has formulated the general policy, stated standards or referred to ascertainable sources for fixing standards, and has left to the executive the task of implementing, executing, or applying the policy. The question comes to be one of degree in the precision with which standards or references are phrased.[1] It might fairly be added that, with the exception of certain statutes authorizing the President to take steps with respect to neutrality in relations between this nation and other nations in time of war, Congress had been moderately precise in the phraseology that it had employed in delegation. Tea-tasting, cost of production of goods for tariff purposes, and subjects of this general nature are normally dealt with in appropriate legislative leisure. Leisure is often a great aid to careful phraseology. Emergency and war and hurry do not necessarily imply careless draftmanship, but they make it more difficult to be careful.

The National Industrial Recovery Act of 1933 recited its purpose in Title I as including:[2]

"A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organi-

[1] For a convenient summary of the decisions of the Supreme Court, see H. L. Rottschaefer, *Handbook of American Constitutional Law*, pp. 72–80.

[2] Act of June 16, 1933, 48 Stat. 195; Schechter Poultry Corporation v. United States, 295 U. S. 495 (1935).

zation of industry for the purpose of coöperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources."

In Section 10 of the act, the President was authorized to make such rules as might be necessary to effectuate the purposes stated in Section 1. The machinery relied on for accomplishing these purposes was a series of code authorities, provided for in several sections of the act. Under the codes, employees and employers were to be organized. Representatives of interested and affected groups were to draft codes, and the codes, when approved by the President, were to have the force of law. The statute provided for the punishment of infractions of rules and codes. Codes were to promote the purposes of the act, were not to promote monopoly, and the trade associations involved were not arbitrarily to restrict membership. The act made the existence of the non-monopolistic and non-discriminatory trade association practices requisites of the code before presidential approval could be given. The statute also authorized the President to make changes in the code provisions submitted to him for approval if he deemed changes necessary to insure fulfillment of the purposes of the act. Executive Order 6675-A approving the Live Poultry Code recited compliance with the conditions of the statute preliminary to executive approval.

The Supreme Court, Mr. Justice Cardozo concurring, held that the President had been furnished insufficient standards by Congress and that therefore, the section delegating to him the power to approve codes was invalid. Title I recited only a general policy, but, said the Court, the standards to be valid must be more specific and ascertainable. That the monopoly and trade association sections were specific did not save the system established by the act, for they were negative rather than positive guides. Finally, the Court stated, in its opinion in the Schechter case, that the fact that the codes were to establish rules of "fair competition" was too uncertain a standard to serve as a basis for executive action. The principles of unfair competition might be fairly well known, but there was no body of ascertainable and generally accepted principles whereby one could determine whether or not competitive practices were fair.

In the Panama Refining Company case,[3] often called the "Hot Oil" case, the Court had held that Title I could not be used to save Sec-

[3] Panama Refining Company v. Ryan, 293 U. S. 388 (1935).

tion 9c, which authorized the President to bar the use of interstate commerce to oil withdrawn from storage in any state in violation of orders by state authorities. The statute neither commanded nor forbade the President to close interstate commerce to "hot" oil. According to the statute, the President might bar the oil from interstate commerce if he wished to do so. The Court held that his wish was insufficient to serve as a legal basis of executive action.

Anticipating the Carter Coal Company case,[4] the Supreme Court stated that if the act were to be construed as giving authority to private groups, such as the members of trade associations or labor unions, to make rules having the force of law, the delegation would be invalid. The theory of the two NIRA decisions on this point was, however, that the delegation of power was to governmental officers. But in the Coal case the Court held that the power to fix prices and hours of labor had been delegated to union and trade association members and decided that the delegation was invalid, irrespective of the standard fixed. The constitutional basis for invalidating a delegation of this type seems to be the due process clause of the Fourteenth Amendment. It seems that the doctrines of the separation of powers and of the due process clause imply that the public is entitled to be governed by laws made by the government, not by private groups. The basic reason for this view is suggested by the Court as arising from the greater temptation and likelihood of partiality in the laws made by private groups, as contrasted to those made by governmental authorities. When political acrimony had passed and cooler judgments prevailed in the discussion of this group of cases, it was generally realized that unless the Court altered its fundamental views, more care would have to be taken in formulating standards for the executive to apply, that more careful statement of legislative policy would have to be made, and that less direct use of private interest groups must be provided for in future legislation. No great hope that changes in Court personnel would insure changes of doctrine could be derived from these decisions, because Mr. Justice Cardozo dissented in the Panama Refining case but concurred in the Schechter case, distinguishing the two on rather narrow grounds. The radical, liberal, and conservative divisions that later characterized some phases of the Court's work were not presaged in these decisions.

The Second World War brought the Emergency Price Control Act of 1942, with its subsequent amendments. The purposes of this act were stated in its opening paragraphs in the following language:

> "to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal mar-

[4] Carter v. Carter Coal Company, 298 U. S. 238 (1936).

ket conditions or scarcities caused by or contributing to the national emergency; to assure that defense appropriations are not dissipated by excessive prices; to protect persons with relatively fixed and limited incomes, consumers, wage-earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living; to prevent hardship to persons engaged in business . . . and to the Federal, State, and local governments, which would result from abnormal increases in prices; to assist in securing adequate production of commodities and facilities; to prevent a post emergency collapse of values. . . . "

The President was authorized to make rules and regulations for the achievement of the objectives mentioned and to subdelegate powers to administrative officers of the government. Was the standard sufficient? The Supreme Court held that it was adequate, distinguishing it from the NIRA on the ground that the Price Control Act delegated power to a governmental officer, not to private groups, and on the ground that the standard fixed was sufficiently clear and ascertainable to satisfy the Court's requirements.[5] Mr. Justice Roberts dissented from this portion of the opinion in the Yakus case, insisting that the standards were as vague and broad as in the NIRA. No doubt the experiences of the depression had familiarized the lay public as well as the executive, the Congress, and the Court with concepts of price ranges, business cycles, stabilization of purchasing power, the statistics of supply and demand, and the numerous other factors referred to as affecting the desired general national welfare, so that when the Court encountered phraseology of this kind in the Price Control Act it seemed less vague than it had fifteen years earlier in NIRA. No doubt, too, the fact that a fierce global war was being waged played its part in making the Court look upon the idea of control with more favor than it otherwise might have done. It is probably true that the language of the Price Control Act had a much more easily ascertainable standard in 1942 than had the language of the National Industrial Recovery Act in 1933. To that extent, the Court would seem to have adhered to its general test laid down in the two NIRA cases. But it is somewhat surprising to see how small a part the war-power concept played in the decision of the Yakus case in so far as the separation of powers was concerned.

Nor is the Stewart case[6] a departure from precedent in deciding that the power to allocate scarce materials includes the power to order suspension of permits to distribute, or to suspend quotas, of persons who violate price control orders that are otherwise valid. This is not affected by the war power, but is a doctrine of normal times. The power to make rules to effectuate the purposes of the act is broad enough to make allocation effective, reasoned the Court, and allocation cannot be effective if those to whom allocations are made do not use the materials in the

[5] Yakus v. United States, 321 U. S. 414 (1944).
[6] Bowles v. Willingham, 321 U. S. 503 (1944).

manner or for the purposes for which they are allocated. Suspension of permits or quotas is really only part of a reallocation procedure to insure proper use of the materials.

In Bowles v. Willingham, the Court decided that "fair and equitable" was a sufficient standard for the administrator to follow in fixing rents under the Price Control Act.[7] In the price control cases, the requirement of the statement of "considerations" as a condition precedent to the issuance of an order should not be confused with a requirement that findings be made and stated, according to the Court. "Considerations," said the Court, were merely synonymous with "reasons."

The price control cases contain many issues relating to administrative and judicial procedure. Some of the Supreme Court's statements in many of these opinions, when taken together with similar statements in the Carter Coal Company case, seem to indicate that the Court feels easier about sustaining a delegation of power to the executive department when the delegation is accompanied by elaborate procedural rules and when judicial review of legal aspects of delegated action is insured.

The cases reviewed thus far have dealt with legislative delegations of authority to the executive department in depression and in war, although the minor rôle played by the existence of war in the theory of the decisions relating to the interpretation and validity of delegations has been noted. A tendency to be less exacting in the requirements imposed on Congress in formulating its language of delegation is to be found in a foreign relations case and in an administrative reorganization case. In United States v. Curtiss-Wright Export Corporation,[8] the Supreme Court was called upon to decide whether or not the delegation of power to the President to forbid the export of arms to belligerent nations in the Chaco dispute complied with the requirements of preceding decisions as to standards and findings. The language of the joint resolution of 1934 read as follows:

> "That if the President finds that the prohibition of the sale of arms and munitions of war in the United States to those countries now engaged in armed conflict in the Chaco may contribute to the reëstablishment of peace between those countries, and if after consultation with the governments of other American Republics and with their coöperation, as well as that of such other governments as he may deem necessary, he makes proclamation to that effect, it shall be unlawful to sell, except under such limitations and exceptions as the President prescribes, any arms or munitions."

The Court sustained the delegation, and sustained the findings recited in the presidential proclamation. It seemed to assume that the language of delegation would not be valid in normal times for internal affairs, an

[7] Steuart & Brother, Inc., v. Bowles, 322 U. S. 398 (1944).

[8] United States v. Curtiss-Wright Export Corporation, 299 U. S. 304 (1936).

assumption that is both dictum and open to question on the merits. But the basis on which the delegation was upheld was that less strict standards are required in congressional acts authorizing the President to handle problems in foreign relations than in domestic matters. This but elaborates the statements made in a number of earlier decisions relating to immigration and paper money, in which the Court intimated that the national government had the powers of a sovereign nation as those powers were understood in international law.[9] The doctrine of enumerated powers did not apply to restrict the exercise of national power in the field of foreign relations, said the Court. With respect to findings, the Court held that the presidential recitation in the proclamation of the statutory formula governing findings was sufficient.

The presidental power to reorganize administrative agencies, transfer duties, and shift administrative subdivisions, was also treated less strictly by the Court than might have been true if the delegation to the executive had been of a power which directly affected private persons or groups. The internal arrangements of the executive department may well be viewed as a matter of public, not private, concern. The Supreme Court interpreted the provisions of the First War Powers Act of December 18, 1941,[10] to mean that the President could assign price control functions temporarily to an agency which was in existence prior to its enactment. The act authorized the President "to make such redistribution of functions among executive agencies as he may deem necessary, including any functions, duties, and powers heretofore by law conferred upon any executive department, commission, bureau, agency, governmental corporation, office, or officer, in such manner as in his judgment shall seem best fitted to carry out the purposes of this title, and to this end he is authorized to make such regulations and to issue such orders as he may deem necessary. . . . " The Court placed considerable reliance on executive interpretation in previous exercises of power under the act, a reliance which this author feels was greater than might have been placed on it if private rights had been directly affected. Presumably, private parties have no vested rights in the continuation of a particular allocation of administrative functions.

May Congress legalize an illegal exercise of executive power by subsequently delegating to an executive officer the power to do that which previously he had no power to do because of the absence of delegating language in a statute? In Kiyoshi Hirabayashi v. United States,[11] the

[9] Fong Yue Ting v. United States, 149 U. S. 698 (1893); Norman v. Baltimore & Ohio R. Co., 294 U. S. 240 (1935).

[10] 55 Stat. 838, c. 593; Fleming v. Mohawk Wrecking and Lumber Company, 91 L. Ed. 991 (1947).

[11] Kiyoshi Hirabayashi v. United States, 320 U. S. 81 (1943).

Japanese Curfew case, Mr. Chief Justice Stone so confuses the executive's power to issue the proclamation justifying exclusion from designated areas, mass removal, and curfew restrictions, with the power of Congress to provide for the same things, that it is impossible to generalize on the decision so far as this point is concerned. But he does state categorically that the President's orders were valid by virtue of congressional ratification, irrespective of their validity or invalidity in the absence of ratification.

Ratification need not be as explicit as it was in the Japanese cases, but may, as in two Shipping Board cases, be indirect and implied.[12] There the ratification was implied from subsequent appropriations to carry on the functions which had been transferred to the Department of Commerce, and this was strengthened by the fact that specific reference had been made to those functions transferred by executive order of a given number.

Congress sometimes delegates power to the courts rather than to the executive departments. It did so when it authorized the Supreme Court to make rules of civil procedure for the federal district courts. The Supreme Court upheld the power of Congress to do this, and it also placed the stamp of its approval on the practice of having the rules submitted to Congress for a fixed period provided for by statute, with the power reserved to Congress to disapprove them. If the rules are not disapproved, they become effective.[13]

In the exercise of the power of judicial review of legislation, a power which rests partly on the principle that this is necessary to enforce the separation of powers, the Supreme Court and Congress recently made notable contributions to the law. The Court repudiated the doctrine that statutes are void *ab initio* if they are later held to be unconstitutional, subscribing to the doctrine that statutes are of some effect if recognized and acted upon in good faith by private parties and public officials alike.[14] Congress in 1937 provided for direct appeals from district court decisions against the constitutionality of congressional statutes and for notice to, and intervention by, the United States in such cases.[15] The Court is still struggling with the problem of "interest" on the part of those who seek to challenge the validity of statutes. Little can be done to extricate the law from the bog into which it has fallen on this point so long as the idea prevails that constitutionality should be sparingly dealt with by the

[12] Isbrandtsen-Moller Company v. United States, 300 U. S. 139 (1937); Swayne & Hoyt v. United States, 300 U. S. 297 (1937).

[13] Sibbach v. Wilson and Company, Inc., 312 U. S. 655 (1941).

[14] Chicot County Drainage District v. Baxter State Bank, 308 U. S. 371 (1940).

[15] Act of August 24, 1937, 50 Stat. 751, c. 754; Fleming v. Rhodes, 91 L. Ed. 998 (1947).

courts. It should be just the opposite, but with statutes or rules of limitation as to the time in which it could be done.[16]

Of very great significance for future developments in judicial relations with the executive is that aspect of the price control cases which upholds the power of Congress to restrict litigants questioning constitutionality or validity of statutes and administrative acts to designated courts, to limit the time in which questions must be raised, to require exhaustion of administrative remedies precedent to utilization of judicial agencies, and to require advancement on the docket of cases of a certain class. The full scope of the implications of these decisions has probably not been fully understood by bench, bar, or scholars.[17]

Two recent opinions of the Supreme Court have discussed the doctrine of political questions. In Colegrove v. Green,[18] the Supreme Court refused to interfere with the operation of the Illinois congressional redistricting act of 1901, which, according to petitioners, had become invalid by the changed conditions arising from shifts of population within the state, enlarging some districts so greatly that the individual voter was denied the full effectiveness of his right to vote. Three justices thought that the question was political. By "political question," Mr. Justice Frankfurter seems to mean a question that is so intertwined with party politics that the courts should not become embroiled in the controversy. Some of the distinctions drawn in some of the opinions are so vague, and the division on the applicability of the doctrine of political questions so even, that it is not possible to predict with certainty that the doctrine will serve as the basis for a similar decision in the future, assuming that the decision might be the same.

In Coleman v. Miller,[19] an amendment case, the Supreme Court refused to pass upon the question of whether or not any particular number of years is reasonable as a requirement of time within which state legislatures or conventions must ratify a proposed amendment. No time limit upon ratification had been fixed by Congress in the proposed child labor amendment, and the Court refused to fix one of its own, saying that this was a subject over which the Constitution had vested full power in Congress. The Court would apply the congressional rule, not its own. This is the second sense in which the term "political question" is used.

An interesting study in the relations between executive and legislative

[16] On moot case, see St. Pierre v. United States, 319 U. S. 41 (1943). On party without interest, see Tileston v. Ullman, 318 U. S. 44 (1943); *ex parte* Albert Levitt, 302 U. S. 633 (1937). On error in passing on constitutional question when case could be disposed of without considering it, see Alma Motor Company v. Timken-Detroit Axle Company and United States, 91 L. Ed. 150 (1946).

[17] See Lockerty v. Phillips, 319 U. S. 182 (1943).

[18] Colegrove v. Green, 328 U. S. 549 (1946).

[19] Coleman v. Miller, 307 U. S. 433 (1939).

departments and the complications that sometimes arise in the field of checks and balances is to be found in Rathbun v. United States.[20] In Myers v. United States,[21] the Court had decided that Congress could not require that the President obtain the consent of the Senate to removals, even though consent to appointments could be required. In the Rathbun case, the Court decided that the Congress could specify grounds for removal which the President must adhere to because the office involved was one which Congress intended to place outside partisan control and because the nature of the work of the office was quasi-judicial or quasi-legislative in nature. The extensive literature that has grown up around these two decisions indicates that a host of constitutional and administrative problems followed in their wake. Some of them can be resolved only by further decisions by the Court itself.

A technical point of minor consequence which might also be mentioned in the field of executive-legislative relations is that recess by the Senate while the House is in session does not constitute an adjournment within the meaning of Article I, section 7, paragraph 2, relating to the return to Congress of vetoed bills by the President.[22]

The work of the Supreme Court in the field of the relation of the departments of government to one another carries little comfort to those who must find deeply rooted prejudices, overwhelming economic determinants, or strong social predilections with which to explain the judicial process and its implications for politics and society. On the whole, no new techniques have been evolved, no new values projected, and no startling extensions made. The law of the separation and delegation of powers and the law governing the relations between departments of government seems to have been growing in a healthy and normal manner during the past fifteen years.

III. THE POWER TO REGULATE COMMERCE

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The commerce clause has been a double-edged tool of constitutional interpretation from the earliest days of judicial review of state and federal legislative activity. It is at once a positive source of federal power and, in the absence of federal exercise of that power, a source of implied limitations on state legislation. Any consideration of trends of interpretation of the clause in the past decade must treat both aspects of the matter. In

[20] Rathbun v. United States, 295 U. S. 602 (1935).
[21] Myers v. United States, 272 U. S. 52 (1926).
[22] Wright v. United States, 302 U. S. 583 (1938).

general, it may be said that expansive implications of the Wagner Act decisions in the spring of 1937 have been elaborated and broadened until the commerce clause is today an ample source of federal legislative authority to deal with a wide range of problems arising out of or having any substantial effect upon interstate commerce. No such clear generalization may be made with respect to the nature of the limitations which the unexercised commerce power imposes on state police power and tax legislation. But the tendency, not yet consistently dominant, seems to be in the direction of upholding much state legislation that would formerly have been ruled a burden on interstate commerce. It is, of course, unnecessary to labor the fact that state legislation incompatible with a valid federal exercise of the commerce power is unconstitutional.

Both the above generalizations require some further examination. The first can perhaps best be looked at in terms of (1) changing definitions of interstate commerce, (2) the reshaping of familiar formulæ for determining the reach of the power to regulate, (3) the abandonment of the "dual federalism" concept, and (4) the broad application of federal statutes to businesses alleged not to be in interstate commerce. Discussion of the second general problem may perhaps best be considered in terms of the gradual, and still wavering, emergence of what may be called the "leave-it-to-Congress trend" in the review of state legislation alleged to burden interstate commerce.

Changing Definitions: Paul v. Virginia into the Discard. One of the hoariest precedents with respect to the definition of interstate commerce was overturned when the Court in 1944 reversed the 1869 holding of Paul v. Virginia[1] that the making of contracts of insurance across state lines was not interstate commerce. The Court held in effect that the earlier series of decisions stemming from Paul v. Virginia was basically inconsistent with the definition of interstate commerce applied in numerous other cases, and must now be brought into line with them.[2] The Court unanimously agreed that insurance was interstate commerce, differing only as to whether Congress intended the Sherman Act to apply. The basic theory of Paul v. Virginia was resoundingly rejected. "A nation-wide business is not deprived of its interstate character merely because it is built upon sales contracts which are local in nature." Other decisions reveal, said the Court, that "not only . . . may transactions be commerce though noncommercial; they may be commerce though illegal and sporadic, and though they do not utilize common carriers or concern the flow of anything more tangible than electrons and information. . . . " To the dogmatic rule that insurance cannot be interstate commerce, the Court

[1] 8 Wall. 168 (1869).

[2] U. S. v. Southeastern Underwriters Association, 322 U. S. 533 (1944). The same result was reached in Polish National Alliance v. NLRB, 322 U. S. 643 (1944).

replied that numerous other decisions made it "difficult now to hold that no activities of any insurance company can ever constitute interstate commerce so as to make it subject to such federal regulation." The precise line bounding the commerce power can never be reached by resort to any single abstract formula. But regardless of the formula, said the Court, "no enterprise of any kind which conducts its activities across state lines has been held to be wholly beyond the regulatory power of Congress under the Commerce Clause. We cannot make an exception of the business of insurance."[3]

Changing Definitions: Federal Power over "Navigable" Streams. A significant broadening of federal power to undertake a wide range of activities was achieved by a latitudinarian interpretation of "navigable" streams, and the consequent validation of federal controls related thereto. The leading case involved the Federal Water Power Act of 1920, which gave the Federal Power Commission authority to license obstructions across navigable streams.[4] An electric power company, unable to secure a license on terms satisfactory to itself, began to build a dam over the New River in Virginia and West Virginia without such a license. The company—joined in its protest by forty-one states—fought an injunction on the ground that the river was not navigable, or, if navigable, that the conditions of the license insisted upon by the Commission had nothing to do with the "navigable capacity" of the stream. The Supreme Court upheld the Commission. The high tribunal ruled that the New River was "navigable" even though not actually navigated, observing that "potential navigability" and the "effect of improvability" were the keys to the question. Here, said the Court, the river could be made navigable by the expenditure of a not unreasonable sum of money. Since the stream was thus "navigable," federal authority was not restricted to controls which related only to navigation. The power in question was the commerce power, of which control over navigability is only a part. Flood protection, the development of watersheds, and the utilization of any electric power which may result—all are within the commerce power. Hence, "navigable waters are subject to national planning and control in the broad regulation of commerce granted the Federal Government." Since Congress could prohibit all obstructions whatever, it could grant the privilege under any conditions it

[3] The majority thought that Congress revealed no intent to except insurance from the general provisions of the Sherman Act, while three dissenters denied the act was intended to apply and were anxious that state laws regulating insurance companies continue to operate until Congress clearly took over the field. Congress later passed the McCarran Act of 1945 leaving state regulation of insurance companies in effect until superseded by federal law. This act was upheld in Prudential Insurance Co. v. Benjamin, 328 U. S. 408 (1946), and Robertson v. Calif., 328 U. S. 440 (1946).

[4] U. S. v. Appalachian Electric Power Co., 311 U. S. 377 (1940).

saw fit. Despite a dissent by two justices ridiculing the test of "potential navigability"—asserting that every creek in the Union is "navigable" under this test—the case seems to establish on a firm basis the broadest kind of federal power over the water resources of the country. In the following year, the Court held that Congress' power over navigation extended to non-navigable tributaries of navigable streams, if that were necessary to protect the navigable rivers. And if legitimate ends such as flood control and improved navigation are achieved, said the Court, it is irrelevant that electric power is also generated in the process. In fact, there may be several purposes in the over-all plan; they may all be pursued so long as one of them is constitutional—and the valid objective need not even be the primary one.[5]

Abstract Formulæ and the Economic Facts of Life. One of the most notable developments in interpretation has been the tendency of the Court to reject the formalism of earlier distinctions between that commerce which is regulable by the federal government and that which is not. The comments which pervaded earlier decisions—particularly as revived in the 1935 and 1936 cases invalidating basic provisions of the New Deal—to the effect that "production" was local and not interstate; that interstate commerce was primarily concerned with "transportation"; that regulations which were "indirectly" related to interstate commerce, no matter how important to its preservation or control, were beyond the reach of the commerce power—these have generally been replaced either by emphasis on competing concepts which were in fact contemporary with the above or by the more direct approach of declaring that these matters are simply not to be settled by resort to neat formulæ. In 1935 and 1936, the Court chose to revive and restress the narrower of two lines of decision, choosing in effect the doctrines of the Sugar Trust case and the first child labor case rather than the "stream of commerce" approach of Stafford v. Wallace and similar cases. In the NRA case and the Guffey Coal Act case, the Court turned clearly to the narrower conceptions; in the Wagner Act cases, it reversed, by implication, much of the basis of these decisions; and in the succeeding ten years it has demonstrated that the conceptualism which dominated the earlier New Deal cases has now been abandoned.

In Currin v. Wallace,[6] for example, the Court flatly rejected the argument that transactions on the tobacco auction market were "local" sales, that "purchases" were not as such interstate commerce, and that they were thus beyond the power of Congress. Such purchases were to be held a part of interstate commerce, which, stressed the Court, comprehended far more than mere "transportation." Again, in Mulford v. Smith,[7]

[5] Phillips v. Guy Atkinson Co., 313 U. S. 508 (1941).
[6] 306 U. S. 1 (1939). [7] 307 U. S. 38 (1939).

the Court chose the "stream of commerce" approach in upholding the establishment of marketing quotas for flue-cured tobacco by the Secretary of Agriculture under legislation of 1938. To the contention that this was really control of production, the Court answered that it was merely limitation of the amount of tobacco marketed at the auction warehouses, which are "the throat where tobacco enters the stream of commerce." Similarly, in an opinion sustaining the Agricultural Marketing Agreement Act of 1937, the Court ruled that price-fixing as related to sales within New York was valid, since the milk itself moved in interstate commerce. Although sales themselves were local, the commodities sold were part of interstate commerce and the entire enterprise was thus within the scope of the commerce power.[8]

One of the most striking examples of this adoption of the broader line of competing precedents was in United States v. Darby,[9] perhaps the most important single case under the commerce clause in the ten-year period. The Fair Labor Standards Act of 1938 not only outlawed the interstate shipment of goods produced under substandard conditions, but also prohibited the employment of workers engaged in producing "for interstate commerce" in violation of the wages and hours standards established under the act. The Court now clearly abandoned the conceptualism of Hammer v. Dagenhart, denied that since this was "production" it was necessarily "local," stressed the idea of an unbroken "stream of commerce," and held unequivocally that Congress can prohibit the interstate shipment of goods produced under labor conditions outlawed by Congress. In this connection, congressional motives "are matters for the legislative judgment, upon the exercise of which the Constitution places no restriction and over which the courts are given no control." Since the holding that federal power "is plenary to exclude any article from interstate commerce subject only to the specific prohibitions in the Constitution" was clearly irreconcilable with the entire basis of the decision in Hammer v. Dagenhart, the earlier case "should be and now is overruled." The opinion in this case also climaxed a basic shift in attitude toward attempts by Congress under the commerce clause to engage in general social and economic legislation. The earlier view—evident throughout the Hammer v. Dagenhart opinion and several others—strongly implied that Congress was acting covertly, conspiratorially, and, in fact, dishonestly, when it attempted to use the clause for such purposes; the newer attitude apparently is not only that Congress is within its rightful power in acting thus, but that the provision actually enjoins upon the legislature a positive responsibility to ensure that the channels of interstate commerce are not

[8] U. S. v. Rock Royal Coöperative, 307 U. S. 533 (1939); similar issues were raised in H. P. Hood and Sons v. U. S., 307 U. S. 588 (1939).

[9] 312 U. S. 100 (1941).

used to foster or perpetuate conditions detrimental to the general interest.

By 1942 the Court was ready to announce outright the end of the old distinction between "production" and "transportation" as a touchstone of valid exercise of the commerce power. In upholding the Agricultural Adjustment Act of 1938 as applied to a farmer raising only twenty-three acres of wheat, all of which he consumed or fed to his own stock, and none of which was intended for interstate commerce, the Court denied the inapplicability of the act merely because none of this particular wheat was going into interstate commerce.[10] The familiar contention that such agricultural production and consumption was a purely "local" matter, the Court reviewed carefully and rejected specifically. Commenting directly on the formalistic distinctions of earlier commerce decisions, the Court said: "We believe that a review of the course of decision under the Commerce Clause will make plain, however, that questions of the power of Congress are not to be decided by reference to any formula which would give controlling force to nomenclature such as 'production' and 'indirect' and foreclose consideration of the actual effects of the activity in question upon interstate commerce." Such formulæ, continued the Court, cannot prevent the commerce power from being validly used to control intrastate activities having an actual effect upon interstate commerce, even though under earlier decisions they might have been defined as "local" or "indirect," and therefore beyond the reach of Congress.

The Death of "Dual Federalism." The landmark case of United States v. Darby not only went far toward destroying excessive formalism in the interpretation of interstate commerce as such; it also struck the death blow at the doctrine which had come to be known as "dual federalism." That doctrine, relied upon heavily in Hammer v. Dagenhart and applied vigorously in the early New Deal commerce cases, held in effect that Congress could not exercise even its delegated powers in such a way as to infringe the inviolable area of state activity deemed to be protected by the Tenth Amendment. The basic ambiguity of holding that the reservation of powers not granted somehow operated even to limit those which were granted was at last disposed of. The Darby opinion brusquely abandoned the entire concept. "The [Tenth] Amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the Amendment." In this respect also, therefore, the first child labor case was directly overruled, and the very dubious argument that the reserved powers of the states could operate as limitations on the specifically granted powers of

[10] Wickard v. Filburn, 317 U. S. 111 (1942).

the federal government was rendered no longer constitutionally respectable.

Statutory Interpretation: Application of Federal Laws to Businesses Alleged not to be in Interstate Commerce. But perhaps even more revealing than the cases which involved the constitutionality of federal legislation were those which dealt with the constantly-arising questions of the applicability of these laws to particular kinds of activities not clearly in interstate commerce. The National Labor Relations Act and the Fair Labor Standards Act, after being upheld in general, continued throughout the period to spawn controversies as to their application in particular instances. In upholding the application of these and other federal acts to situations which in an earlier period would certainly not have been held within the federal commerce power, the Court has indicated the degree to which it has broadened the concept of interstate commerce in recent years. The Wagner Act, for example, was held applicable to a power company which did not sell power for resale outside New York State and nearly all of whose electric power was consumed within the state.[11] Stressing economic facts, the Court commented on the "impressive evidence of the dependence of interstate and foreign commerce upon the continuity of the service. . . . " If the power were cut off, noted the Court, "instantly, the terminals and trains of three great interstate railroads would cease to operate; interstate communications by telegraph, telephone, and radio would stop; lights maintained as aids to navigation would go out; and the business of interstate ferries and of foreign steamships whose docks and lines are operated by electric energy would be clearly impeded." Congress, thought the Court, could protect commerce against such consequences, even though the service whose disruption would cause them was not itself interstate.

Several cases involving the application of the Fair Labor Standards Act are also illustrative in this connection. The act applies in terms to all employees engaged in the production of goods for interstate commerce, including anyone "employed in any process or occupation necessary to the production thereof, in any state." The Court has upheld the act as applied to the operating and maintenance employees of the owner of a building who rented space to producers selling largely in interstate commerce;[12] to employees of a newspaper with a daily circulation of 11,000, one-half of one per cent of which was out-of-state;[13] to employees of a company en-

[11] Consolidated Edison Co. v. NLRB, 305 U. S. 197 (1939). See also NLRB v. Fainblatt, 306 U. S. 601 (1939), in which the act was held applicable to a so-called "contract shop" in New Jersey which took cloth supplied by owners in New York, made it into garments, and sent them back to the owners in New York to be merchandised. [12] Kirschbaum v. Walling, 316 U. S. 517 (1942).

[13] Maybee v. White Plains Publishing Co., 327 U. S. 178 (1946).

gaged in cleaning the windows of buildings whose occupants were producing goods for an interstate market;[14] and to employees engaged in repair and maintenance of vehicles which were rented for the transportation of other vehicles in interstate commerce.[15] As Frankfurter said in the first-mentioned case above, "To search for a dependable touchstone to determine whether employees are 'engaged in commerce or in the production of goods for commerce' is as rewarding as an attempt to square the circle." What the Court now looks at, therefore, is simply whether there is in fact a "close and immediate tie" with interstate commerce. If there is, the act has been held applicable.

Interpretation and application of other federal acts reveal similar trends. The Court ruled, for example, that the Agricultural Marketing Agreement Act of 1937 could be applied to a firm all of whose milk was produced locally and none of which was sold in interstate commerce. Since Congress could regulate the price of milk sold in interstate commerce, it could also, as an incident to the broader power, regulate the price of locally-produced and locally-sold milk which competed with that sold in interstate commerce. This was not because the local milk was itself in interstate commerce, but because the control here exerted was necessary to protect interstate commerce. Said the Court: "The commerce power is not confined in its exercise to the regulation of commerce among the states. It extends to those intrastate activities which so affect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end."[16]

Even more sweeping language was used in opinions in 1945 and 1946 upholding the "death sentence" clause of the Public Utility Holding Company Act of 1935 as a valid exercise of the commerce power and as applied to the two companies involved.[17] To the Court, these companies "depend for their very existence upon the constant and systematic use of the mails and the instrumentalities of interstate commerce," and therefore possess an "undeniable interstate character." "Congress, of course, has undoubted power under the commerce clause to impose relevant conditions and requirements on those who use the channels of interstate commerce so that those channels will not be conduits for promoting or perpetuating economic evils." Hence, continued the unanimous opinion, "to the extent

[14] Martino v. Michigan Window Cleaning Co., 327 U. S. 173 (1946).

[15] Boutell v. Walling, 327 U. S. 463 (1946). Other important cases involving application of the act were Okla. Press Pub. Co. v. Walling, 327 U. S. 186 (1946), and Roland Electric Co. v. Walling, 327 U. S. 657 (1946).

[16] U. S. v. Wrightwood Dairy Co., 315 U. S. 110 (1942).

[17] North American Co. v. SEC, 327 U. S. 686 (1945), and American Power and Light Co., v. SEC, 329 U. S. 90 (1946).

that corporate business is transacted through such channels, affecting commerce in more states than one, Congress may act directly with respect to that business to protect what it conceives to be the national welfare. It may prescribe appropriate regulations and determine the conditions under which that business may be pursued. . . . In short, Congress is completely uninhibited by the commerce clause in selecting the means considered necessary for bringing about the desired conditions in the channels of interstate commerce. Any limitations are to be found in other sections of the Constitution."[18]

The "Leave-it-to-Congress Trend" in the Review of State Legislation. A recent law review article speaks of the "leave-it-to-Congress trend" in the interpretation of the law of tax immunities. A similar trend is to be noted in the decisions of the Court dealing with state tax and police power measures alleged to interfere with interstate commerce. Beginning with expression in minority opinions in 1938 and 1939, there has been a growing tendency to uphold non-discriminatory state legislation where the attack on the statute is based on the judicially derived implications of the "still, small voice" of the unexercised commerce power. State taxes were invalidated in Adams Manufacturing Co. v. Storen[19] and Gwin, White & Prince v. Henneford,[20] over dissents urging that general non-discriminatory tax measures—even though they affect interstate commerce—should be upheld by the Court until Congress remedied whatever dangers lay in the cumulative impact of such taxes. By 1940, in McGoldrick v. Berwind-White Coal Mining Co.,[21] the majority was ready to go far toward adopting this view. Here another non-discriminatory state tax was upheld by the majority, nominally on the venerable formula of the degree of "burden" on interstate commerce. The language of the opinion, however, indicated the extent to which the non-discriminatory argument was adopted by the Court, as well as the general attitude that evils in this field must be for Congress, and not the Court, to correct.[22] The general view is perhaps best expressed in the well-known Greyhound case in 1940 invalidating a state tax found to be a burden on interstate commerce. Here, dissenters Black, Frankfurter, and Douglas stressed again the view that the Court should not interfere with non-discriminatory state tax laws which affect interstate commerce.

[18] 329 U. S. 90, at 99–100.
[19] 304 U. S. 307 (1938).
[20] 305 U. S. 434 (1939).
[21] 309 U. S. 33 (1940).
[22] If there was any doubt that this was the tendency of the majority opinion in the case, the dissent by Hughes, Roberts, and McReynolds emphasized the emergence of the newer trend. On the non-discriminatory point, Hughes said: "It has long been held by this Court in the interest of constitutional freedom of that commerce that a direct tax upon it is not saved because the same or a similar tax is laid also upon intrastate commerce."

"Judicial control of national commerce—unlike legislative regulations—must from inherent limitations of the judicial process treat the subject by the hit-and-miss method of deciding single local controversies upon evidence and information limited by the narrow rules of litigation. Spasmodic and unrelated instances of litigation cannot afford an adequate basis for the creation of integrated national rules which alone can afford that full protection for interstate commerce intended by the Constitution. We would, therefore, leave the questions raised by the Arkansas tax for consideration of Congress in a nation-wide survey of the constantly increasing barriers to trade among the States. Unconfined by 'the narrow scope of judicial proceedings, Congress alone can, in the exercise of its plenary constitutional control over interstate commerce, not only consider whether such a tax as now under scrutiny is consistent with the best interests of our national economy, but can also on the basis of full exploration of the many aspects of a complicated problem devise a national policy fair alike to the States and our Union. Diverse and interacting state laws may well have created avoidable hardships . . . But the remedy, if any is called for, we think is within the ample reach of Congress."[23]

This view is not yet clearly dominant. In fact, some of the sharpest divisions of the Court in recent years have been over this issue. In general, however, the Court has tended more and more to uphold non-discriminatory state taxes even though they impinge upon interstate commerce. In the term of Court following the Greyhound case, for example, there were six cases in which state taxes were alleged to burden interstate commerce. In five of them,[24] the Court found the tax non-discriminatory and valid. In only one[25] did the Court invalidate the tax, and there because the necessary operation of the statute was clearly to discriminate against out-of-state trade. But in the term just concluded, there was evidence that considerable disagreement still prevails in the Court in this field. In a leading case,[26] the Court held invalid an Indiana gross income tax as applied to gross receipts from the interstate sales of certain securities. The majority distinguished the Berwind-White case and returned to the general principles of Adams Manufacturing Company v. Storen, holding that this was like a direct unapportioned tax on gross receipts from interstate business. Such a tax has always been held "definitely beyond state taxing power," even though non-discriminatory and similarly applicable to all business done within the state. Three dissenters emphasized the point that the tax was not aimed at interstate commerce and did not discriminate against it. They thought it no different from a tax on the proceeds of a sale of real property in some other state, where the mails were used to authorize it and to exchange the deed for the purchase price. The present tax should

[23] McCarroll v. Dixie Greyhound Lines, 309 U. S. 176 (1940).

[24] The more important ones were Nelson v. Sears, Roebuck and Co., 312 U. S. 359 (1941); Nelson v. Montgomery, Ward and Co., 312 U. S. 373 (1941); and Caskey Baking Co. v. Virginia, 313 U. S. 117 (1941).

[25] Best & Co. v. Maxwell, 311 U. S. 454 (1940).

[26] Freeman v. Hewit, 329 U. S. 249 (1946).

be upheld, thought the minority, if the Court will "adhere to the philosophy of our recent cases." In other cases at this same term, the Court divided sharply on the validity of state taxes on stevedoring[27] and warehousing,[28] invalidating the former and upholding the latter—each time over strong dissents which reveal the degree of fluidity prevailing in this field.

In numerous other cases under the commerce clause, the Court upheld state laws on the ground that a fair effort at tax apportionment had been made,[29] or that the effect of a police power statute on interstate commerce was unsubstantial or indirect,[30] or on other familiar bases. In general, a tolerance for state police power and tax legislation in the absence of congressional preëmption of the field is characteristic.[31] For example, a California act controlling the marketing of raisins—ninety-five per cent of which were shipped out of state—was upheld in the absence of any indication that Congress intended to occupy the field. The Court recognized that the effect on interstate commerce was "direct," but ruled that this was a field which Congress might appropriately leave to state control until Congress itself acted.[32] Despite occasional exceptions and a considerable degree of continuing uncertainty—especially in the tax field—it is probably accurate to say, therefore, that the trend in the last ten years has been toward granting more and more discretion to state legislatures to exercise tax and police powers which impinge on interstate commerce, and to adopt the general attitude that where such legislation, unless it is clearly discriminatory, results in problems in the realm of interstate trade, those problems are properly left for the federal Congress to resolve by a positive exercise of its commerce power.

Conclusions. When the Court assembled in October, 1937, it was clear that much reshaping of the judicial gloss on the commerce clause was in

[27] Joseph v. Carter and Weekes Stevedoring Co., 67 Sup. Ct. 815 (1947). In dissenting from the 5–4 decision invalidating the tax, Douglas urged that "the logic of words should yield to the logic of realities." His formulation of the general concept herein discussed is as follows: "Unless formal doctrine is to be restored to this field, the label which the tax bears should not be controlling; and the tax should be sustained unless it evinces hostility to interstate commerce or in practical operation obstructs or impedes it."

[28] Independent Warehouses v. Scheele, 67 Sup. Ct. 1062 (1947).

[29] E.g., International Harvester Co. v. Evatt, 329 U. S. 416 (1947); Nashville, C. & St. L. Ry. v. Browning, 310 U. S. 362 (1940).

[30] E.g., Milk Control Bd. v. Eisenberg Farm Products, 306 U. S. 346 (1939); Terminal R. R. Assn. v. Brotherhood of R. R. Trainmen, 318 U. S. 1 (1943).

[31] An interesting exception to this must be noted in connection with two important cases in which the Court used the unexercised commerce power to protect what were essentially civil liberties. See Edwards v. California, 314 U. S. 160 (1941), and Morgan v. Virginia, 328 U. S. 373 (1946).

[32] Parker v. Brown, 317 U. S. 341 (1943).

prospect. The rulings in the preceding spring in the Wagner Act cases had indicated that the position of the majority was now inconsistent with several specific precedents still on the books and, perhaps more significantly, with a general approach to state and federal legislation out of which these specific precedents had been born. In the succeeding ten years, the Court has specifically overruled the restrictive precedents in the heretofore landmark cases of Paul v. Virginia and Hammer v. Dagenhart; it has largely discarded the formalism of the earlier approach to the commerce clause in favor of one which seeks to get at and recognize the actual economic interdependence of the nation and its subdivisions; it has restored the commerce clause to its full strength as a delegated power of the central government uninhibited by the constitutional truism that those powers not delegated are reserved to the states or the people; it has gone far to uphold the application of federal laws to businesses not directly in interstate commerce; it has greatly broadened the concept of "navigable" streams and the scope of federal power in relation thereto; and it has emphasized the commerce clause as a source of positive federal power, while at the same time diminishing its scope as an *ipso facto* delimitation of state power where Congress has not acted. All this is to say that the commerce clause as now interpreted by the Court tends to place in legislatures, and not in courts, the primary duty of meeting the commercial problems arising out of modern-day industrialization and technological advance. No one can deny that it means a sweeping increase in the legitimate authority of Congress to deal with a wide range of problems heretofore held to be beyond its reach. This does not mean there are no limitations on Congress—or, in the absence of congressional action, on state legislatures—in dealing with these matters. It does mean that the Court is now prepared to recognize (1) that the facts of modern economic life make national many problems which were formerly local, and (2) that, by and large, it is legislatures—state and national—rather than courts on whose shoulders, in a democracy, the attempt to wrestle with these problems must primarily devolve. This attitude is not, of course (as the rest of this symposium makes clear), restricted to the interpretation of the commerce clause. But it is in the interpretation of that clause, as one of the major sources of national power, that the implications of the reconstituted high tribunal's approach are perhaps most dramatically apparent.

FOREIGN GOVERNMENT AND POLITICS

THE REVIVAL OF GERMAN UNIONS OF LOCAL AUTHORITIES AFTER WORLD WAR II

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A democratic and peace-loving Germany must have sound political, economic, social, and ethical foundations. On the political side, this means, among other things, the restoration of local self-government, destroyed by Nazi rule and now in process of being rebuilt. Fortunately, Germany has a long tradition of local self-government on which to build. The tradition reaches back to the Middle Ages, but was lost in the centralizing absolutism of modern times. With the reforms of Stein in 1808, a new chapter in the history of local self-government began which lasted on down through the Bismarckian Empire and the Weimar Republic.

One of the attributes of local self-government is freedom of association. In other words, local authorities may voluntarily unite in associations for the promotion of their mutual interests and the defense of their rights against encroachments by the state. For example, the United States has its state leagues of municipalities, federated into the American Municipal Association, France has its *Union des Villes et Communes de France*, and Britain has its Association of Municipal Corporations. The same was true of pre-Hitler Germany, with its various unions of cities (*Städte*), rural counties (*Landkreise*), rural communes or municipalities (*Landgemeinden*), and provinces.

The first German union of local authorities was the Hanover *Städteverein* founded in 1866 while Hanover was still an independent kingdom. Thirty years later (1896), the cities of all Prussia formed the *Preussischer Städtetag*. In that same year, the Bavarian cities were also organized. These various state unions were finally united (1905) into an all-German association known as the *Deutscher Städtetag*. In addition to the state unions, larger cities were direct members of the organization—usually cities with more than 25,000 inhabitants and constituting *Stadtkreise* (city-counties or county-boroughs, to use the English terminology). In 1931, 279 cities held direct membership in the *Deutscher Städtetag*.

In 1910, the small and medium-sized cities organized the *Reichsstädtebund*. At the close of the Weimar period, it had 1,536 member cities, chiefly those which were *kreisangehörig*, *i.e.*, they were not city-counties, but were subject to the jurisdiction of the county in which they were located. For the rural counties, there was the *Deutscher Landkreistag*

(1921), while the rural communes had the *Deutscher Landgemeindetag* (1916).

All of these associations of local authorities with their various state affiliated unions were dissolved in 1933 by the Nazis, who created a single compulsory organization embracing all local governments and known as the *Deutscher Gemeindetag*.[1] The *Deutscher Gemeindetag* was not intended to be an agency of self-government, but rather was an instrumentality of state control exercised by the Ministry of the Interior and of party control exercised through the *Hauptamt für Kommunalpolitik*. (Here as elsewhere there was conflict between state and party agencies over their respective jurisdictions.)

The end of the war found the fine office building of the *Deutscher Gemeindetag* in Berlin, built during the Nazi period (Berlin-Charlottenburg, Berlinerstrasse 4–9), partially destroyed, with consequent dispersion or loss of books and records. (Some of the books and records are still at Wels in Austria.) Including the library of the Municipal Science Institute (*Kommunalwissenschaftliches Institut*), there are at present about 20,000 volumes in the Berlin headquarters.

Because the *Deutscher Gemeindetag* was deemed to be a Nazi organization, it was dissolved and prohibited in the U.S. and British Zones. The prohibition was subsequently repeated in Allied Control Council Law No. 2 (October 10, 1945). Since the office building is physically located in the British sector of Berlin, it is under British Military Government property control. In July, 1946, British Military Government appointed as custodian of the property Dr. Oskar Mulert, president of the old *Deutscher Städtetag* prior to 1933. The *Deutscher Gemeindetag* still has a skeleton staff of between seventy and eighty people, whose salaries are paid by the city of Berlin; but, as long as the organization is under Control Council ban, it must remain in a condition of suspended animation.

The Potsdam Declaration of August 2, 1945, called for the restoration of local self-government through elected representative bodies beginning at the *Gemeinde* level and working upwards. The U.S. Zone took the lead in carrying through these elections, *Gemeinde* councils being chosen in January, 1946, rural county councils (*Landkreise*) in April, and city-county councils (*Stadtkreise*) in May. Similar elections were held in the British, French, and Soviet Zones, and also in Berlin, during the course of 1946. These local councils in turn elected *Bürgermeister*, *Landräte*, and other leading local officials.

It was these local officials who took the lead in reëstablishing unions of local authorities like those which had existed before 1933. This was a

[1] See F. M. Marx, "The New Roof over German Local Government," *National Municipal Review*, Vol. 23, pp. 255–257 (1934).

perfectly natural development. Many of the local officials had been active in the pre-1933 unions and had been ousted by the Nazis. Moreover, the very magnitude of the problems confronting local governments after the end of the war was such as to make common counsel and conferences desirable.

Meetings of *Bürgermeister* began toward the end of 1945 while the *Bürgermeister* were still Military Government appointees. At that time, the larger cities of Hesse organized the *Hessischer Städteverband.* The *Württemberg-Baden Städteverband* was also established in 1945, with the other *Länder* of the U. S. and British Zones following suit in 1946. In July, 1946, British Military Government approved the formation of the *Städtetag* of the British Zone.

Interzonal city conferences were held also—in Munich (July, 1946), Cologne (September, 1946), Stuttgart (November, 1946), Wiesbaden (March, 1947), and Goslar (July, 1947). Although these were open to the large cities of all four Zones, very few municipal officials from the Soviet and French Zones were allowed to attend. At the Wiesbaden conference, it was voted to revive the *Deutscher Städtetag* on the basis of the existing unions of the U.S. and British Zones, but without prejudice to cities of the Soviet and French Zones which might wish to join. As before 1933, the larger cities have direct membership while other cities have membership through the state union to which they belong. Berlin was voted into the *Städtetag* at the Goslar conference, but thus far there have been no additions from the Soviet and French Zones.

The *Deutscher Städtetag* of 1947 is much like the *Deutscher Städtetag* of 1932, being primarily an organization of the larger cities represented through their *Oberbürgermeister* and other officials. Similar developments have taken place in the U.S. and British Zones with respect to the revival of other unions of local authorities. There is now a bizonal *Reichsstädtebund* for the medium and smaller cities, and a bizonal *Deutscher Landkreistag* for the rural counties. The *Landgemeinden* of the two zones are also in the process of being organized on a state basis, but no bizonal union has as yet been established.

Little has been done in the Soviet and French Zones with respect to the reëstablishment of unions of local authorities. A few informal meetings of local officials have been held in various states of the Soviet Zone, but no formal organizations have been created. The French have belatedly authorized associations of local authorities, but only for the states of their Zone. They are opposed to any connections outside of the French Zone until the Allies shall have agreed upon the answers to basic territorial, political, and economic questions involving Germany as a whole. In August, 1947, a *Städteverband* for the larger cities of Rhineland-Palatinate

was created. Similar organizations are in preparation for South Baden and for South Württemberg-Hohenzollern.

The work of these revived unions is carried on through small staffs, through special committees of local officials, and through periodic meetings and conferences at which the committees report and at which there is general discussion of common problems. The agenda of these meetings resemble those of similar organizations in other countries, but in addition there are many questions of an emergency character. The latter particularly relate to food and rationing, fuel supply (both for domestic heating and for industrial purposes), and repair of dwellings and other buildings. It must be remembered that the German economy is one of acute shortages which plague the local *Bürgermeister* and *Landrat* day and night. In addition, there are tens of thousands of expellees and refugees for whom some sort of accommodations must be provided. Because of the heavy destruction in cities, the burden of sheltering these uprooted people falls especially upon the rural counties and communes.

Because so much of state legislation directly or indirectly affects local governments, the local authorities naturally wish to participate in the framing of that legislation, or at least to have an opportunity to be heard. This applies particularly to the basic local-government codes such as the *Gemeindeordnungen* and *Kreisordnungen*. Representative city officials have even criticized Military Government for insisting that certain provisions be included in the local-government codes. For example, the old-time *Oberbürgermeister* dislikes the division of authority between the *Oberbürgermeister* and the *Oberstadtdirektor* which the British have insisted upon. It is too British; one should not try to foist upon German local government institutions foreign to it. Again, American insistence upon having the *Landrat* elected by the county council instead of appointed by the state has been strongly opposed.

However, in the long run, the most crucial problem, both in Germany and elsewhere, is finance. The unions of local authorities have constantly emphasized the necessity of having their own revenues which they themselves raise and spend. But since these revenues are entirely inadequate to meet fiscal needs, the further question of finance equalization (*Finanzausgleich*) looms very large. By what formulas and under what conditions can revenues raised by the states be most equitably distributed among the local authorities? This is indeed a thorny question, but one which goes to the heart of local autonomy.

The relations of the various unions of local authorities with each other are still in process of development. Prior to 1933, all had their separate headquarters in Berlin and maintained contact with each other through an informal joint committee (*Arbeitsgemeinschaft*). This *Arbeitsgemeinschaft*

has now been restored, but its functioning has been hampered by the fact that the union headquarters are located in different places—for example, the *Städtetag* in Bad Godesburg near Cologne, the *Reichsstädtebund* in Ratingen near Düsseldorf, and the *Landkreistag* in Frankfurt-am-Main. It would be advantageous if the headquarters were all located in the same city in close physical proximity to each other, so that joint use could be made of library and information services as is the case with the various American organizations having headquarters at 1313 East 60th St., Chicago.

Recently there has been discussion in the Civil Administration Committee of the Allied Control Authority of the possibility of using the facilities of the *Deutscher Gemeindetag* in Berlin as a library and information center for German cities and other local authorities. The proposal has strong support from the reorganized German unions of local authorities, but early action is unlikely for two reasons. In the first place, certain of the Allies (for example, the French) are inclined to believe that such a move is a step toward the revival of the Nazi-created *Deutscher Gemeindetag*. U. S. Military Government does not share this view, but merely insists upon certain principles. Thus the unions of local authorities must be voluntary and not compulsory. Moreover, since U. S. policy emphasizes federalism and decentralization, unions of local authorities should be organized by states and then federated into a larger organization. This is now the case with the *Deutscher Städtetag*. Although the larger cities are direct members of the *Städtetag*, the state leagues of cities are also members and have their separate state meetings from time to time. So long as these two principles are observed, U. S. Military Government has no objection to the unions of local authorities developing certain common facilities, whether in Berlin or elsewhere.

The second reason why no early action is to be expected on the proposal to use the *Deutscher Gemeindetag* library as an information center is that all such questions are being deferred until after the Council of Foreign Ministers meets in London in November. If the Council fails to reach agreement and it is decided to proceed with the further governmental organization of the three Western Zones, it would be better for the unions of local authorities to have their common library and information center at some convenient point in Western Germany.

In conclusion, a few words may be said about the relation of the reconstituted German unions of local authorities to the International Union of Local Authorities established in 1913 with headquarters in Brussels. From 1926 onward, the *Deutscher Städtetag* belonged to the International Union. The Nazi-created *Deutscher Gemeindetag* took over the membership in the International Union, and the Sixth Congress of the Union was held in Berlin (1936). With the coming of World War II, the International

Union passed under German control and remained so until the liberation of Brussels.

The Seventh International Congress of Local Authorities met in Paris in July, 1947. U. S. Military Government took the lead in inquiring if representatives of the reëstablished German unions might be invited to the Congress, at least as observers. The suggestion, however, was rejected by the International Union, on the ground that it was premature and might give rise to unfortunate incidents at the Congress. U. S. Military Government thereupon decided to send a delegation of Military Government officials to the Paris meeting. The author was head of this delegation. It was hoped that a statement might be made with reference to what was being done in Germany to revive local self-government and to reëstablish the German unions of local authorities as they were before 1933. However, by formal vote of the Congress, the Military Government delegation was denied the right to speak, on the ground that anything about Germany was "a controversial question." In view of what the local governments of France, Belgium, Holland, Poland, Czechoslovakia, and other countries suffered at the hands of the Nazis, this action is understandable. Nevertheless, if Germany is to become a peace-loving member of the family of nations, it is important that normal contacts with the outside world be speedily restored. Among such contacts are those afforded by the International Union of Local Authorities and its constituent national organizations.

Local self-government in Germany has a long and difficult road ahead of it. However, the work of restoration has been successfully begun. Given a solution of the major economic and political questions involving Germany as a whole, there is reason to hope that it will continue to develop.

INTERNATIONAL AFFAIRS

IS A PEACE TREATY WITH GERMANY LEGALLY POSSIBLE AND POLITICALLY DESIRABLE?

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I

By its complete defeat, the surrender of its armed force, and the abolishment of its national government, Germany has ceased to exist as a sovereign state and subject of international law.[1] By the Declaration of Berlin, June 5, 1945, the four Powers occupying the country—the United States of America, the United Kingdom, the Soviet Union, and the French Republic—assumed "supreme authority with respect to Germany including all powers possessed by the German Government, the High Command, and any state, municipal, or local government or authority." This meant that the four occupant Powers have assumed sovereignty over the former German territory and its population, though the term "sovereignty" was not used in the text of the Declaration. The four occupant Powers exercise their joint sovereignty through the Control Council, established at Berlin as the legitimate successor of the last national government of Germany. All this is in complete conformity with general international law, which authorizes a victorious state, after so-called *debellatio* of its opponent, to establish its own sovereignty over the territory and population of the subjugated state. *Debellatio* implies automatic termination of the state of war. Hence, a peace treaty with Germany is legally not possible. For a peace treaty presupposes the continued existence of the opponent belligerents as subjects of international law and a legal state of war in their mutual relations.

The opposite doctrine, advocated by some authorities and governments, that Germany, in spite of the fact that there exists no independent national government, not even a "government in exile," still exists as a sovereign state, that the four occupant Powers are not the sovereigns in relation to the German territory and its population, that they only exercise Germany's sovereignty just as a warden exercises the rights of his ward, is manifestly based on a legal fiction. According to international law, a community is a state if, and as long as, a certain population is living on a definite territory under an independent government. If one of these three essential elements of a state in the sense of international law is missing, the state as a subject

[1] Cf. the author's article, "The Legal Status of Germany," etc., "*American Journal of International Law*," Vol. 39 (1945), pp. 518–526.

of international law disappears, or, in other words, the community ceases to exist as a sovereign state. No state can exercise the sovereignty of another state. State sovereignty does not permit representation or substitution.

Legal fictions should be avoided in clear juristic thinking. However, it is understandable that politicians should be inclined to use legal fictions if such fictions are politically advantageous. The legal fiction that Germany still exists as a sovereign state has no such advantage. On the contrary: if Germany still exists as a sovereign state, the occupation of the country must be interpreted as *occupatio bellica* under the Fourth Hague Convention; and many measures taken by the occupant Powers constitute violations of this Convention, for which a future German government might hold the occupant Powers legally responsible. Non-application of the Hague Convention is possible only under the assumption that Germany has ceased to exist as a sovereign state and that the occupant Powers have extended their own sovereignty over the former German territory and its population. The argument that the occupant Powers are not the sovereigns in relation to the occupied territory because they do not intend to "annex" it is of no importance; for sovereignty over a territory can be established not only for the purpose of incorporating it definitely into the territory of the occupant Power, but also for that of ceding it later to another state, or of establishing on the territory a new state. It is the last-mentioned alternative which exactly applies to the occupation of the former German territory.

That Germany has ceased to exist as a sovereign state does not prevent the occupant Powers from creating a new German state. But it is at least doubtful whether the new state would be legally identical with the German Reich as it existed at the outbreak of World War II. There certainly will be no legal continuity in the relation between the German Reich and the new German state from the point of view of German national law. The legal order which will be the basis of New Germany cannot come into existence in conformity with the constitution of the old German Reich, which has definitely lost its validity. From the point of view of international law at least, no direct continuity will exist, since between the German Reich defeated in World War II and the new Germany there will have been a period during which no German state as a subject of international law existed. New Germany cannot be the direct successor of old Germany; it will be the successor of the *condominium* exercised by the four occupant Powers as sovereigns over the former German territory and its population. As to the identity of the new with the old German state, the fact—important from the viewpoint of international law—must be taken into consideration that the territory of the new state will be quite different from that of the old state, since vital parts of it have already been annexed by

Poland and the Soviet Union and will probably not be assigned to the new German state. Identity of territory is—besides legal continuity—a criterion of the identity of a state. Non-identity of the new with the old German state must certainly be recognized in case no peace settlement with respect to Germany as a whole proves possible, and Germany is divided into two states according to the line separating the territory occupied by the Soviet Union from the territory occupied by the other three Powers. Neither of these two states could be considered as identical with the German Reich; with neither of them could a peace treaty be concluded. The four Powers which, for the time being, are the sovereigns over the former German territory and its population may, it is true, conclude a treaty with the new state; or the three Western Powers may conclude a treaty with the new state set up on the territory occupied by them. But such treaty could not have the character of a peace treaty in the true sense of the term. However, such a treaty could contain the same provisions which a peace treaty with Germany, if it were legally possible, would have contained with respect to territorial changes, reparations, and the like.

II

There can be little doubt that such a treaty is politically not desirable. The victors should not repeat the mistake, made after the First World War, of burdening the government of a democratic Germany with political responsibility for a peace settlement whose harshness had been made necessary by the guilt of a previous autocratic or totalitarian government. In Hitler's propaganda against the Weimar Republic, political responsibility for the Treaty of Versailles played the most important rôle. The responsibility which the new democratic government of Germany assumed by signing the Treaty of Versailles destroyed the Weimar Republic and opened the way to the Nazis. It is, besides, very doubtful whether it will be possible to find an honest German statesman willing to sign a treaty by which vital parts of German territory are ceded to Poland and the Soviet Union and the forcible transfer of many millions of Germans from their homeland into the overcrowded remaining territory is recognized. A German statesman who signs his name to such treaty would certainly share the fate of Erzberger, slain for having signed a much milder treaty. There can be little doubt that, under the pressure of inevitable nationalistic propaganda, the German people would consider such a treaty null and void because enforced upon them, just as they considered the Versailles Treaty as "dictated" and consequently not binding. This reaction, from the point of view of international law, is certainly not correct; but what is the political value of a treaty when those committed to the execution of it consider themselves not morally obligated?

III

What, then, is the politically adequate legal form for settling the German question? Since the future German state will be a new state, it must be created by the governments of the states which have the sovereignty over the territory concerned. This is what in reality must and will happen. The new German state can come into existence only by an act of the occupant Powers. They may, directly or indirectly, appoint a central German government or order general elections for the establishment of such a government, or of a constituent assembly empowered to create it. The creative act will always be a sovereign act of the occupant Powers. It is of the utmost importance that the legal procedure which these Powers adopt shall be in conformity with political reality. This will be the case if the new German state is created by an international agreement of the states which have the legal power to create it, since they possess the sovereignty over the territory and the population concerned. There are precedents in international law for the creation of a new state by international agreement. The most recent ones are the creation of the State of Danzig by the Treaty of Versailles and the creation of the State of the Vatican City by the treaty of February 11, 1929, concluded between Italy and the Holy See. To both of these treaties, the state to be created was not, and could not be, a contracting party. By both, international obligations were imposed upon the new state in spite of the fact that it was not a contracting party. A treaty by which a new state is created is one of the few exceptions to the rule that a treaty can impose obligations only upon the contracting states.[2] Hence the treaty by which the new German state (or the new state of Western Germany) is created may contain all the obligations which the victorious states wish to impose upon the new German (or Western German) state.

The fact that there will be no (or no direct) legal continuity, and consequently no legal identity, in the relation between Nazi Germany and the future democratic Germany (or Western Germany) might facilitate the development of a new political philosophy as an ideological basis of the new state. The legal procedure here suggested has the further advantage that it would be in harmony with political reality, and particularly that conflict would be avoided between the idea of a treaty voluntarily entered into by a vanquished state and the fact that this state is forced to accept the conditions laid down in the treaty; and, finally, that since there will be no peace treaty at all, no separate peace treaty would be necessary, what-

[2] Cf. my articles, "Traités internationaux à la charge d'États tiers," *Mélanges Offerts à Ernest Mahaim* (Paris, 1935), II, 164–172; and "Contributions à la theorie du traité international," *Revue Internationale de la Théorie du Droit*, X, 253–292 (1936).

ever political situation may exist with respect to the relation between the Soviet Union and the Western Powers.

IV

The act by which the new German state is to be created can be performed only by the occupant Powers. It must be preceded by an international agreement entered into by these states, on the one hand, and the other states which were at war with Germany, on the other hand; and the purpose of this agreement must be to determine the obligations to be imposed upon the new German state by its creators. By this agreement, the occupant Powers will assume responsibility for erecting the new German state as an international subject bound by the stipulated obligations.

The creative act itself may be called a "Declaration of the United States of America, the United Kingdom, the Soviet Union, and the French Republic concerning the reëstablishment of New Germany (Act of Foundation"; or "Declaration of the United States of America, the United Kingdom, and the French Republic concerning the establishment of Western Germany." The act would have the character of an international agreement in the relations of the occupant Powers with one another and of a legislative act in their relation with the occupied territory and its population. Its preamble might read as follows: "The United States, the United Kingdom, etc., with the purpose of reëstablishing on the territory jointly occupied by them, Germany (or of establishing Western Germany) as a sovereign state, agree and order . . . ." Article 1 should determine the territory of the new state. Thus no cession of territory on the part of the new German government would be necessary. The new state would come into existence with the territory assigned to it by its creators. Article 2 should stipulate that the new German state shall always have the structure of a federal state and a democratic constitution; that is to say, that certain matters must be decentralized with respect to legislation as well as administration, and that the members of the central and local legislative bodies and of the central and local governments shall be elected by the people according to the principles of equal, secret, and personal suffrage of men and women who have completed their twenty-first year of age, without regard to race, religion, rank, or class, and that freedom of conscience, religion, press, speech, association, and especially freedom of political parties must be guaranteed. Thus the fundamental principles of the constitution of the new state would be determined by the Act of Foundation. Article 3 should provide that the new state shall be subject to the international obligations determined in Annex I to the Act of Foundation. This Annex should contain the stipulations which, under normal circumstances, would have been laid down in the peace treaty. Article 4 should

provide that responsible for a violation of the obligations laid down in Annex I are the new state collectively according to general international law and the members of its government individually according to the principles laid down in Annex II to the Act of Foundation. This Annex should contain provisions concerning the establishment of an international court and legal rules constituting individual criminal and civil responsibility for violations of the international obligations determined in Annex I. Article 5 should decree that the constitution of the new state shall contain a clause to the effect that Articles 1–4 of the Act of Foundation (including Annexes I and II) form an integral part of the constitution, and that this part of the constitution can be changed only with the consent of the Powers by which the new state has been created. By such a provision, the same effect would be achieved as by an international treaty entered into with the new state: no change by a unilateral act of the new state would be possible. The international obligations stipulated in Annex I would have been not only imposed on the new state by its creators, but also assumed by the entire people represented in the constituent assembly. Article 6 should enact that the constitution of the new state shall be established by a Constitutent Assembly to be elected according to regulations laid down in Annex III to the Act of Foundation. Article 7 should stipulate that as soon as the constitution, in conformity with the foregoing Articles, has come into force and a national government, in conformity with the constitution, has been established, the Control Council—or, if only the establishment of Western Germany comes into consideration, an analogous organ of the three occupant Powers—shall confer upon this government full sovereignty over its territory, and that this act shall imply the recognition of the new state and its government on the part of the creating powers. A last Article should charge the Control Council, or an analogous organ for Western Germany, with the execution of the Act of Foundation.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

Reprints of the symposium, "Ten Years of the Supreme Court: 1937–1947," begun in this issue, will be available only for filling orders received by the Managing Editor *within three weeks* after the February issue appears. The price for reprints, complete and with covers, will be twenty-five cents per copy, which will barely cover costs.

To avoid extra expense, which has become considerable, members of the Association are urgently requested to transmit to the Managing Editor items intended for the News and Notes pages in time to reach him not later than the twentieth of the *second* month preceding publication, *e.g.*, for the April issue, by February 20. Otherwise, they must be inserted in galley proof or held over.

The Nominating Committee of the American Political Science Association presents the following nominations for officers for 1948, to be acted upon at the Association's annual business meeting: president, Henry R. Spencer, Ohio State University; vice-presidents, Hans Kelsen, University of California; Estes Kefauver, member of Congress; and Roscoe C. Martin, University of Alabama; members of the Executive Council, 1948–50: Harold F. Alderfer, Pennsylvania State College; Ben Cherrington, University of Denver; Merle Fainsod, Harvard University; J. M. Ray, University of Maryland; and J. B. Shannon, University of Kentucky. The members of the Nominating Committee are: Charles Aikin, University of California; D. F. Fleming, Vanderbilt University; John M. Gaus, Harvard University; Alpheus T. Mason, Princeton University; and Harold Zink, DePauw University (*chairman*).

While on leave during the fall term, Professor Harwood L. Childs, of Princeton University, has been carrying forward work on a general volume on public opinion.

During Professor Thomas S. Barclay's absence from Stanford University while teaching during the fall at the University of Illinois, his courses have been in charge of Professor Robert R. Rankin, of Duke University.

After his return from sabbatical leave, Professor Charles Fairman was appointed to the faculty of the Stanford Law School, where he will offer courses in international law and seminars in the field of public law. He, however, will devote half of his time to the department of political science. Professor Philip W. Buck is continuing as acting chairman of the department.

On October 30, Professor Alpheus T. Mason, of Princeton University, delivered the Henry Wells Lawrence Memorial Lecture at Connecticut College on the subject of "Liberalism."

Professor Paul T. Stafford, of Princeton University, is on leave and serving as consultant to the New Jersey Civil Service Commission, with particular responsibility for the transfer of former United States Employment Service activities to the Employment Service Division of the New Jersey Unemployment Compensation Commission.

Professor Lloyd M. Short, of the University of Minnesota, is serving as chairman of a twenty-one-member commission created by the 1947 legislature to study the Minnesota constitution with a view to its amendment or revision. Professor William Anderson will serve as a member of the commission's study committee on local government. Professor Short received a LL.D. degree from his alma mater, Knox College, at the commencement exercises last June.

During the current year, Professor Amry Vandenbosch, of the University of Kentucky, is serving as visiting professor at Northwestern University.

Professor Malbone W. Graham is on leave from the University of California at Los Angeles during the current semester. After a year in Australia and New Zealand, Professor Dean E. McHenry is again in residence.

At the University of California at Los Angeles, Professor D. E. McHenry has been appointed dean of the social science division of the College of Letters and Science.

For the Public Library Inquiry, sponsored by the Social Science Research Council, Professor James L. McCamy, of the University of Wisconsin, will survey government publications and public libraries.

Professors J. A. C. Grant and H. Arthur Steiner have been appointed by President Robert Gordon Sproul to serve as members of the planning committee for the Law School at U.C.L.A., recently authorized by the legislature. Announcement of the beginning of instruction in the new school will be made at a later time.

At Duke University, Professor Taylor Cole, who resumed his professorship in September upon his return from spending a period of study in Canada as a Guggenheim Fellow, has been appointed director of graduate studies in political science.

During the autumn quarter, Dr. Alexander Meiklejohn gave three

lectures at the University of Chicago on the subject, "Free Speech and Justice Holmes," and Professor Walton H. Hamilton gave a series on "The Politics of Industry," both under the auspices of the Charles R. Walgreen Foundation.

Dr. Julian Towster began work at the University of Chicago in the fall quarter as assistant professor of political science, in the fields of international relations and Soviet foreign policy and government.

Dr. David B. Truman has resigned as assistant professor of government at Harvard University to accept an associate professorship at Williams College. Williams has recently been given the punch cards and other data from the *Fortune Survey* by Mr. Elmo Roper, and Dr. Truman's principal assignment will be the exploitation of these materials for teaching purposes, with emphasis on the substantive aspects of the data rather than on technics.

Dr. William C. Rogers has resigned from Public Administration Clearing House to accept an appointment at the University of Virginia as research associate of the Bureau of Public Administration and assistant professor of political science. Mr. Joseph S. Toner has been appointed assistant to the director of the Clearing House, and his duties will include general supervision of the Personnel Exchange.

Professor Graham H. Stuart, of Stanford University, spent the past summer in Washington working on a history of the Department of State.

Professor Charles W. Kneier, of the University of Illinois, has been granted leave of absence for the second semester to make a study of state supervision over municipally owned utilities.

Professor A. N. Christensen is on leave from the University of Minnesota during the current quarter and is serving as visiting professor at the Central University at Caracas, Venezuela. On his return trip to Minnesota, he will lecture at universities in Central America and Mexico.

During the past summer, Professor Harold Zink, of DePauw University, served as visiting professor at the University of Colorado. A new appointee as assistant professor at DePauw is Mr. Virgil B. Zimmerman, formerly of OPA and the University of West Virginia.

No one has as yet been appointed to conduct the course in Oriental politics very successfully taught for many years at the State University of Iowa by the distinguished Oriental scholar, Dr. Sudhindra Bose, who died on May 26, 1946.

Dr. Jack T. Johnson has been promoted to the rank of associate pro-

fessor at the State University of Iowa, where he has organized and is presenting a new type of course entitled "Man and Society." It is a general education course in the field of social science.

Dr. Marian Irish has been appointed head of the newly created department of political science at the University of Florida. Messrs. Elston Roady and Charles Clapp have been appointed instructors. Miss Daisy Parker is on leave while doing graduate work at the University of Virginia.

Dr. John H. E. Fried, now on leave from the International Labor Office, is in Nuernberg as legal consultant to the tribunals which are trying German war criminals.

Mr. Nelson E. Taylor, Jr., has been appointed assistant professor of government at Tufts College.

Professor Frank H. Jonas, of the University of Utah, has been named by the governor of the state as his appointee to the Utah State Legislative Council. He also has been elected chairman of the Veterans Council, Utah State Department of Veterans Affairs.

Dr. H. K. Hossom has resigned from the staff of the National Labor Relations Board in Seattle to accept an instructorship at the University of Washington.

Professor Wilfred E. Binkley, of Ohio Northern University, represented the American Political Science Association at the inauguration of the new president of Findlay College on November 19. Somewhat earlier, Professor Francis G. Wilson, of the University of Illinois, served in the same capacity at inaugural exercises at Illinois Wesleyan University.

Dr. James H. Meisel, who has been serving as lecturer in political science at the University of Michigan, has been appointed assistant professor.

Professor John Bassett Moore, of Columbia University, tenth president of the American Political Science Association, died at his home in New York City on November 12 at the age of eighty-six. A memorial will appear in the next issue of the REVIEW.

During the absence of Professor Henry S. Commager, of Columbia University, while lecturing at Cambridge University, his lectures in the course on American constitutional history at Columbia are being delivered by Professor Edward S. Corwin, of Princeton University.

During October, Professor Carl B. Swisher, of Johns Hopkins University, delivered at Boston University the Gaspar G. Bacon Lectures on the

Constitution of the United States. His lectures were entitled "The Post-War Constitution."

Dr. Donald C. Stone, assistant director in charge of administrative management, United States Bureau of the Budget, served as chairman of the United States delegation to the Berne meeting of the International Congress of Administrative Sciences and is now acting as adviser to the United States delegation to the 1947 General Assembly of the United Nations and as a member of the Assembly's standing committee on administrative and budgetary questions.

Post-War Constitutions of the World, by Henry H. Collins, Jr., has recently been released by Microfilm Service. Consisting of some twenty constitutions, and aggregating about five hundred pages of text, the collection can be had at ten dollars a copy from the Microfilm Service, 2153 Florida Ave., N.W., Washington, D. C.

The Institute of Citizenship at Kansas State College is sponsoring a series of eleven late afternoon lectures on "The United States and Russia in World Politics." The historical, economic, psychological, linguistic, military, scientific, and philosophical aspects of relations between the two countries are presented by staff members of the appropriate departments.

Professor Erich Hula, of the New School for Social Research, gave a graduate course on International Organization at Fordham University during the fall term, and will offer a seminar there on Problems of International Government and Politics during the Spring term.

At Ripon College, Mr. William Fleming, J.D., University of Freiburg, 1933, has been appointed assistant professor and chairman of the newly established department of political science.

At Occidental College, Dr. Howard J. McMurray, former member of Congress from Milwaukee, and later lecturer in political science at the University of Wisconsin, has been appointed professor of public administration and director of the curriculum in applied politics and economics; and Dr. Richard Reath, formerly of the University of Idaho, has been made assistant professor of political science.

At Williams College, Dr. Vincent M. Barnett, Jr., chairman of the department of political science, has been promoted to a full professorship effective July 1, 1948. Dr. James M. Burns has been appointed assistant professor and Mr. Walter S. Wilmot, Jr., instructor.

After an extended period in government employ, Professor John T.

Salter has resumed teaching at the University of Wisconsin in the field of political parties and public opinion.

During the past summer, Professor William Ebenstein, of Princeton University, visited Germany, Czechoslovakia, France, and several other European countries. During the spring term of 1948, he will visit various countries in South America, spending the greater part of his time investigating political conditions in Argentina.

Professor Eric C. Bellquist has returned to his post at the University of California following a leave of absence for the 1947 spring semester, during which time he resumed direction, as chief, of the European Division, OCI, Department of State.

Professor Winston W. Crouch is on a year's leave from the University of California at Los Angeles and is associated with the staff of the American Institute for Public Affairs.

Under a policy of rotation, Professor Carl B. Swisher has been succeeded by Professor V. O. Key, Jr., as chairman of the department of political science at the Johns Hopkins University.

Dr. Alex N. Dragnich has resigned his assistant professorship at Western Reserve University to accept a State Department appointment as cultural attaché at Belgrade, Yugoslavia.

At the University of Oregon, Dr. Charles P. Schleicher, formerly of the Department of State, has been appointed to a full professorship and Drs. Howard E. Dean and Leon Epstein, of Columbia University and the University of Chicago, respectively, have been made assistant professors.

At Duke University, Mr. Earl T. Hanson has been promoted to an assistant professorship; Dr. Leon Ellis, recently of Princeton University, has been appointed lecturer in Far Eastern government; and Rosa Sawyer Cheek, has become a part-time instructor in the Women's College.

New staff members in political science at the University of Kansas are Messrs. James Drury, previously of Princeton University, Russell H. Barrett, John Conard, and Rhoten A. Smith, of Kansas, and Miss Marian Ridgeway, of Washington State College.

Dr. William Miller, lecturer in politics and a member of the Princeton Surveys, is currently serving as director of research for the State Commission on Postwar Economic Welfare. The commission recently submitted a report and enabling legislation to provide health insurance for New Jersey state employees.

After a war leave of four and one-half years, Professor O. W. Wilson has

resumed his teaching at the University of California in the field of police administration. As Lieutenant Colonel, and, later, Colonel, Professor Wilson served with AFHQ, SHAEF, and OMGUS, in Italy, England, and Germany.

At Stanford University, Professor Harold Berman, who offers courses in comparative law in the Law School, will offer courses in the government and administration of the Soviet Union for the department of political science during the winter and spring quarters.

Dr. Richard H. Heindel, formerly chief of the Division of Libraries and Institutes in the Department of State, is working for a period of two months as a staff associate of the Public Library Inquiry of the SSRC, and is preparing a report on foreign libraries and publishing and the international structure and outlook in this field. In October, he was appointed to the professional staff of the United States Senate Committee on foreign relations.

Mr. Robert C. Bates, Rhodes Scholar and Oxford M. A., has been engaged to teach the courses in international law and elements of jurisprudence at Montana State University.

Professor John F. Sly, of Princeton University, prepared materials and appeared before the committee on taxation and finance in regard to the tax article drafted by the recent New Jersey state constitutional convention. Dr. William Miller, of the Princeton Surveys, served as counsel to the committee on the executive article, and he, Mr. James Arnold, and Miss Isobel Muirhead, of the Princeton Surveys, prepared several preliminary memoranda for use by the convention.

Dr. Russell G. Whitesel, who received a doctor's degree in political science last August at Cornell University, has been appointed to an assistant professorship at the State University of Iowa, where he is teaching courses in American government and comparative foreign governments.

Professor Joseph S. Roucek, of Hofstra College, was a visiting professor at the University of Washington during the past summer and also lectured at the University of British Columbia. Mr. Ernest F. Acheson, recently of Syracuse University, has been appointed instructor at Hofstra.

Among persons appointed to the Advisory Council which, in accordance with action of Congress during its last session, will undertake a full investigation of the social security program are Mr. Frank Bane, executive director of the Council of State Governments and former executive director of the Federal Social Security Board, and Mr. John Miller, assistant director of the National Planning Association.

Professor William S. Carpenter, of Princeton University, has been reappointed president of the New Jersey Civil Service Commission, which is currently engaged in extending the state civil service system to communities hitherto uncovered, and in devising new types of objective examinations. Professor Carpenter is also serving as consultant to the United States Civil Service Commission on its committee on college-federal agency coöperation.

At Princeton University, a new course on "Basic Factors in Politics" is being taught for the first time this term under the direction of Assistant Professors Richard C. Snyder and Hubert H. Wilson. The course treats the demographic background of politics, the impacts of group conflict, problems of science and technology, national and individual political psychology, and other bases of political attitudes and structures.

At Indiana University, new appointments in the department of government include W. Richard Lomax, formerly director of civilian personnel in the Marine Corps, as assistant professor and director of the Institute for Training in Public Service; Byrum E. Carter, Burchard R. Davidson, and Garland A. Haas as instructors; and Miss Mary E. Swain as lecturer.

Recent appointees at the University of California at Los Angeles include Dr. Robert G. Neumann, last year lecturer at the University of Wisconsin, and Dr. Charles R. Nixon, formerly of Smith College, as assistant professors; Dr. Gilbert R. Barnhardt, formerly tutor at Harvard University, as instructor; and Mr. Daniel S. McHargue as part-time lecturer for the first semester.

At Brown University, Dr. Murray S. Stedman, Jr., formerly an instructor at Columbia University, where he also completed his work for the doctorate, and Mr. George A. Lanyi, who is completing his work for the doctorate at Harvard University, have been appointed assistant professors.

Several additions have been made to the staff of the department of history and political science at the University of Utah. These include Dr. Helmut G. Callis as professor of history and political science, Dr. Franz B. Schick as associate professor of political science, and Mr. Ellsworth E. Weaver as lecturer in political science. Dr. O. Meredith Wilson, formerly at the University of Chicago, has been appointed dean of the School of Arts and Sciences and will also assist in the political science department, offering a course on American foreign policy.

Dr. Dell G. Hitchner, formerly of the University of Wichita, has accepted an assistant professorship at the University of Washington.

On October 13, Dr. Robert Strausz-Hupé, of the University of Pennsylvania, addressed the Industrial College of the Armed Forces in Washington on the subject of "Political Geography."

New instructors added to the staff at the University of Pennsylvania are Messrs. Lyman D. Wooster, Garold W. Thum, and C. Edwin Gilmore.

After sixteen months as officer in charge of public administration in the military government of Yamanashi prefecture, Japan, Mr. Ralph J. D. Braibanti has returned to the Maxwell Graduate School of Syracuse University. From data compiled in Japan, he is now working on his doctoral dissertation, which will deal with American military government in Japan at the prefectural level.

Dr. Totton J. Anderson, formerly dean of Ventura Junior College, has been appointed associate professor at the University of Southern California.

Mr. Coleman B. Ransone, Jr., has been appointed to an instructorship at the University of Alabama.

At the University of Wyoming, Dr. Egbert S. Wengert, formerly of Sweetbriar College, has been appointed professor of political science and head of the department; Dr. Hedley V. Cooke, long in the Foreign Service and last year at Vanderbilt University, has been appointed assistant professor; and Mr. Daniel W. Tuttle, recently a graduate student at the University of Minnesota, has been appointed instructor. After teaching in the department since 1920, Professor Henry J. Peterson has retired.

Professor Hans Simons, of the Graduate Faculty, New School for Social Research, has received a one-year leave to accept the position of chief of the Governmental Structure Branch in the Civil Administration Division of the Office of Military Government for Germany (U.S.).

Dr. Arnold Brecht, of the Graduate Faculty, New School for Social Research, has been invited by the Lord Mayor and Senate of the Land and City of Hamburg, Germany, to represent Hamburg on the eight-man Executive Committee in Frankfurt-on-the-Main that is to become the executive branch of the bizonal German government. Hamburg was willing to appoint Dr. Brecht even if he chose to remain a United States citizen. After consultation with the State Department, which prefers this top governmental body to be composed exclusively of German citizens, Dr. Brecht has declined the offer.

Dr. Ossip K. Flechtheim, formerly of Bates College, served for more than a year as chief of the Ministries Section, Berlin Branch, Office of U. S. Chief of Counsel for War Crimes, also acting, after May, 1947, as chief of

the entire Berlin Branch. He used his residence in Germany to complete a study entitled "Die Kommunistische Partei Deutschlands in der Weimarer Republik" which is scheduled to appear this winter at Bollwerk Verlag, Offenbach-Main. Since his return to this country, he has been assistant professor of government and history at Colby College.

By request of the Citizens' Federal Committee on Education, an advisory committee in the Federal Security Agency, Professor George A. Graham, of Princeton University, has directed a study of the organization of federal activity in education. More than fifty educational programs were studied by Professor Graham's group, which completed its work and submitted a 300-page confidential report on October 6. Professor Graham was assisted by William A. Mitchell, assistant professor of government at the University of Virginia, and by Drs. Donald G. MacDonald and William W. Marvel, instructors at Princeton.

The 1937 report of the President's Committee on Administrative Management, entitled "Administrative Management in the Government of the United States," and long out of print, has been issued in facsimile reprint by Public Administration Service and can be purchased at a price of one dollar.

To meet the growing need in government for technical and professional personnel with supplementary training in administration, the department of political and social science at the Illinois Institute of Technology has recently established two graduate programs in public administration leading to the degree of master of science.

The seventeenth annual meeting of the Southern Political Science Association was held at Atlanta, Georgia, November 6–8. Among topics to which sessions were devoted were "Constitutional Revision in the Southern States," "International Organization and Collective Security," "The Political Philosophy of the South," and "The Electoral Process in the South." Representing the American Political Science Association, Professor Benjamin F. Wright, of Harvard University, spoke at a subscription dinner on "General Education and the Principles of Democracy," and, as president of the American Society for Public Administration, Professor Leonard D. White, of the University of Chicago, spoke on "The State and Local Chapters of the ASPA." The presidential address of Professor Robert J. Harris, of Louisiana State University, dealt with "The Decline of Judicial Review."

The Carnegie Corporation of New York has made a grant of $75,000 for three years to assist in supporting an experimental course for seniors at Dartmouth College, to be known as the "Great Issues" course. The course

is now under way, and auxiliary to it a Public Affairs Laboratory has been established and equipped with government publications, newspapers and periodicals, and other materials. By means of lectures, members of the Dartmouth faculty orient the students in the various "issues" taken up, preparing them for special lectures by invited authorities and for grouped discussions. The plan was worked out during the past year by a special faculty committee.

At a meeting of Western political scientists held at Salt Lake City on November 29, a symposium on "Rocky Mountain Politics—the Picture for 1948" was led by Professor Thomas C. Donnelly, of the University of New Mexico, and round-tables on "Objectives of United States Foreign Policy" and "Current Developments in Local Government," by Professors Charles P. Schleicher, of the University of Oregon, and Henry K. Stanford, of the University of Denver, respectively. A luncheon meeting was addressed by Professor Charles Fairman, of Stanford University, and a business session was devoted to a proposal to organize a regional association in harmony with action taken a year ago by the Executive Council of the American Political Science Association.

The first meeting of the New York State Political Science Group was held at Syracuse, New York, October 3–5 and was attended by sixty persons. Topics of addresses or round-tables on a program arranged by Professor Herman C. Beyle, of Syracuse University, included "Political Science and the State Civil Service," "Education's Aid to the State," "The Introductory Course in Political Science," "Political Science and Local Research," "Civic Education and Community Leadership," and "Some Problems in the Control of Subversive Activity." Speakers and discussion leaders included Messrs. Henry J. McFarland, of the Department of Civil Service, and Frank Moore, State Comptroller, and Professors Henry Reiff, of St Lawrence University, W. E. Weller, of the University of Rochester, Robert E. Cushman, of Cornell University, and C. G. Post, of Vassar College. A committee, with Professor Henry Reiff as chairman, was appointed to arrange for next year's meeting and to carry on various other activities suggested at the meeting.

The Institute of Social Order, with headquarters at St. Louis University, is publishing a mimeographed bi-monthly *Political Science Service Letter*. Besides editorial notes, each issue reports activities among political scientists, offers hints and aids for the classroom, and notes recent literature of special interest. One bibliography has been published, intended for use in a course, Introduction to Political Science, and last year a symposium was run on "Democracy." The editor is Dr. R. C. Hartnett, director of the department of political science at the University of Detroit.

The *Service Letter* is intended chiefly for the twenty-seven colleges and universities conducted by the Jesuits in the United States, but the policy of the I.S.O. is to encourage membership in the American Political Science Association, a more active interest in it, and especially participation in the annual meetings. Persons who wish to see a copy of the *Service Letter* or to be put on its mailing list, without charge, should communicate with Miss Florence Zimmermann, 3115 S. Grand Blvd., St. Louis 18, Missouri.

On September 29–30, the Advisory Panel on Methods of Encouraging Political Participation of the American Political Science Association joined with the American Bar Association and the School of Law of New York University in sponsoring a Conference on "Citizen Participation in Public Affairs." Four half-day sessions, held at the Waldorf-Astoria Hotel, were devoted to: (1) The Citizen's Responsibility for the National Government; (2) The Citizen's Participation in State Government; (3) The Citizen's Participation in Local Government, and; (4) Educating the Citizen. President Arthur W. Macmahon presided at the second session, and the panel's chairman, Hugh A. Bone, served as discussion leader at the last session. Other members of the panel participated in the program and a number of political scientists from the area attended. The Conference was called on the occasion of the launching of the Citizenship Clearing House by Dean Arthur T. Vanderbilt of the New York University School of Law. One of the functions of the panel is to inquire into the implications and usefulness of the Clearing House to political scientists and to the Association. On October 11, a meeting was held at Yale University to present the project to political scientists in that area. Similar meetings will be held elsewhere during the autumn and winter, and a report on the Citizenship Clearing House will be made to the Association at the December meeting.

On June 19, 1947, a second meeting of a "Conference on the Distribution of Documentary Materials" was held under the auspices of the World Peace Foundation at the Woodrow Wilson Foundation in New York City. Representatives of fifteen private research organizations, six specialized agencies, the United Nations, the Department of State, and four of the larger educational foundations attended. Under discussion were the reports of four continuation committees appointed at the first conference in March, dealing with (1) library needs for indexing United Nations documents, (2) bibliographical servicing of documents on international relations, (3) distribution, sales, and comprehensiveness of publications of the Department of State, and (4) coöperation between private research groups. The conference reached two specific recommendations, both of which are shortly to be acted upon. First, it agreed that in lieu of official indices of United Nations and specialized agency documentation, a quarterly selected bibliography covering both printed and processed

documentation should be issued as at least a partial guide. With the assistance of the Carnegie Endowment, the Carnegie Corporation, and the Rockefeller Foundation, the World Peace Foundation has undertaken this assignment, and the first issue of *Documents of International Organizations: A Selected Bibliography* appeared in November under the guidance of an advisory committee composed of Philip C. Jessup, Verner Clapp, Walter R. Sharp, Ruth Savord, and Harry N. M. Winton. Second, the conference urged that there be at least annual publication of research projects actually in progress by private research organizations and institutions. This proposal has been accepted by the Carnegie Endowment for International Peace, which will publish such a report in the January issue of *International Conciliation*. The Conference, which is entirely an *ad hoc* body concerned primarily with devising ways and means of making more comprehensible the flood of documentation on international relations, decided to have at least one more meeting to follow up on some of the loose ends still left. Among these are further exploration of the increasing problem of an index to United Nations material of a comprehensive character which can be cared for only by an official agency, further investigation of and information about documentation of the specialized agencies, and additional concerted support for the publications program of the Department of State. Any additional meetings will be sponsored by the Carnegie Endowment for International Peace and will have Mr. Alger Hiss as chairman.

BOOK REVIEWS AND NOTICES

Time of Delirium. By Herman Rauschning. (New York: D. Appleton-Century Company. 1946. Pp. vii, 369. $4.00.)

This volume is one of profound pessimism. Now and then the sun starts to break through the clouds, but is quickly overcome and in the end the sun sets forever apparently. Spengler's *Decline of the West* and Dr. Rauschning's earlier *Revolution of Nihilism* make it easy to understand what is here unfolded. In many darkened pages in great detail, one might almost say with enthusiasm, the author traces what he terms the "decadence of Western civilization" and elaborates the nihilistic phase of the great crisis. The "social impulses" of the West are gradually withering away, whether seen in socialism, nationalism, capitalism, or religion.

America has not escaped these destructive forces. "The intellectual status quo in America today is characterized by the incompleteness of the dialectical process of self-annihilation of ideologies and standards." The intellectuals are bankrupt, while youth is filled with the burning need for new interpretation of fragmentary knowledge. "England survives, but international relations are her Achilles' heel." France and Italy are likewise suffering from grave illness. The Russian internal problem is likewise a very difficult one.

Three tasks confront us. The first is the establishment of a genuinely constitutional free association of nations. The second is the overcoming of the "revolution-vs.-counter revolution antagonism in society." The third is the "overcoming of ideological perplexity by intimate experience of the reality of spiritual standards" (p. 356). But in the end these devices seem likely to prove futile. The Second World War has already become a World Civil War. "An actual Third World War would mean the end of the West, if not also the total annihilation of civilization itself" (p. 368).

At bottom, the problem, Dr. Rauschning concludes, is a moral question. But while he disclaims the rôle of a prophet of doom, he seems to be wholly and utterly discouraged as to any successful outcome. The crisis is mounting to delirium, but we may always reflect upon the "Great Peace" that can follow. Dr. Rauschning is sophisticated and erudite, but far from constructive and dynamic. He is at his best and apparently happiest when he preaches the gospel of doom in set terms, and weakest when he endeavors to show that he does not wholly mean it. In turn a Prussian soldier, a Junker, a Nazi leader, a vigorous critic of Nazism, taking refuge in Poland, Switzerland, France, and England—now in southern California awaiting his naturalization papers in 1947—it is clear that this dizzy process has left Dr. Rauschning profoundly attracted by "delirium" and with little

energy left for the building of a new synthesis of political, social, economic, and ethical forces.

CHARLES E. MERRIAM.

University of Chicago.

The Individual, the State, and World Government. BY A. C. EWING. (New York: The Macmillan Company. 1947. Pp. viii, 322. $4.00.)

The author declares at the outset: "I wish in this book to see whether I as a philosopher, without venturing into detailed questions of current politics, can put forward any general ideas which might be of some help in striving for the solution of the great problems on which these practical questions turn in the last resort." The "great problems" to be considered are listed as follows: the question of the state and the rights of the individual, the question of democracy, and the question of the limitation of the nation-state with a view to the prevention of war. A fourth question, "socialism," is said to be "more a subject for the expert, here the economist," than are the others.

After thus stating his position, the author departs from it very rapidly by giving a good deal of attention to socialism, and by discussing such detailed questions of current politics as the social value of economic planning (p. 83); the place of the expert and that of the civil servant in democracy (pp. 128–149); the proper treatment of Germany in order to secure peace and a good international order (pp. 226–252); and several particular problems connected with the Charter of the United Nations (pp. 276–295).

Of course the discussion does deal with the chief questions mentioned, and does make frequent references to ethical principles; but it also abounds in statements of definite positions which are not necessary consequences of those principles, e.g.: "If we reject proportional representation, we are definitely sacrificing the democratic element to some extent in the interests of efficiency, and increasing greatly the rôle played in government by pure luck (p. 151); "Cabinet ministers and heads of departments in the Civil Service should delegate their powers more freely" (p. 169); and "There can be no doubt that every nation would be much better economically, and that many causes which might possibly lead eventually to war would be removed, if there were an effective system of international control in economic matters "(p. 253).

In both arrangement and style, the book gives the impression that it is a hasty compilation of ideas which may have been developed in lectures or discussions. An origin of this kind might help to explain such inconsistencies as: (1) the suggestion that the rights of the individual may be defined as powers or securities of a kind such that the individual can

rightly demand of others that they should normally not interfere with them" (p. 10), and the statement that considerations as to human potentialities "should be borne in mind by all who believe that the common man is unfit for real individual freedom or for democracy. It is his chief right to be made fitter" (p. 109); (2) or the remark, "I should like to say that the ethical laws governing the state are exactly the same as the ethical laws governing the individual, but there are real objections to saying this" (p. 181); and the conclusion, "What is required to end the nightmare of wars from which we periodically suffer is . . . merely the guidance of our political actions by reason (or common sense, if you like to put it that way) so far as to apply consistently to states those ethical principles which are generally recognized as applying to individuals" (p. 317).

There is much of value in the book, and it is pervaded by a realization of social necessities and a recognition of ethical imperatives. However, it cannot be considered an important contribution to political philosophy.

MIRIAM E. OATMAN.

Washington, D. C.

Man and the State. EDITED BY WILLIAM EBENSTEIN. (New York: Rinehart and Company, Inc. 1947. Pp. xvi, 781. $5.00.)

It is the purpose of this book to present the major political ideas of modern Western civilization in the original sources. Each group of selections is preceded by an introductory essay explaining the significance of the selections and of their authors. Extensive critical bibliographies conclude the book. The organization of the book is novel. Happily, Professor Ebenstein conceives of political philosophy not as an antiquarian study, but as an intellectual enterprise which has a direct and vital bearing upon the political problem of the day. In consequence, he deviates in the organization of his material from the traditional chronological presentation in terms of individual philosophers, and arranges the selections according to the fundamental issues of contemporary political philosophy. Thus the book is divided into four parts: "The Foundation of Democracy"; "Anti-Democratic Thought"; "Capitalism, Socialism, Planning"; and "From Nationalism to World Order." These main divisions are subdivided into chapters illustrating the main ideas and problems.

Professor Ebenstein has executed his purpose with considerable originality and brilliance. The selection of authors and writings is generally judicious. The only serious deficiency in this respect is the omission of any selection representative of Catholic political thought; there is nothing in the book indicating the importance of the doctrine of the corporate state for modern political philosophy. Stalin's revision of the doctrine of the withering away of the state might well have been added to Lenin's

statement, and a selection from Lawrence Dennis would have provided a more authentic illustration of American fascism than Henry Wallace's sweeping denunciation.

While the merits of the book as such are considerable, it belongs to a species which is open to objections on philosophical and pedagogical grounds. A book such as Professor Ebenstein's is obviously a substitute in two different respects. It is first of all a substitute for the perusal of the texts in their entirety. It has become the fashion in different branches of the social sciences to substitute selections from great writers for the original texts. It is, however, one thing to read the political writings of Machiavelli, Hobbes, Locke, Rousseau, and Burke as they were written by their authors, and quite another to take fragments selected by somebody else for the whole of their political philosophy. If Machiavelli wrote *The Prince* as he did, who are we to say that only part of it is important and part of it is not worth knowing? It seems to this reviewer that many of the errors which have marred the understanding of political philosophers, such as Machiavelli and Hobbes, are the result of such arbitrary selections on the pretense of knowing more about the political philosophy of the thinkers than they evidently knew themselves. If, for instance, people had taken the trouble to read the *Leviathan* as a whole, they would have recognized that Hobbes' thoughts on the state are an integral part of his general theological, philosophical, and ethical conceptions, and would not have accepted the totalitarian interpretations of his political philosophy.

A book such as this is also a substitute for a systematic exposition of modern political philosophy. As such, it is sometimes illuminating and suggestive, yet sometimes rather misleading. Professor Ebenstein has, of course, a political philosophy of his own, and he prefers certain philosophers to others. Yet a book of this kind gives the author no opportunity to do justice either to his own political philosophy or to the political thought of those with whom he disagrees. Professor Hayek may be all wrong; but to take as proof for his being wrong the fact that he is still teaching at the London School of Economics (p. 471) strikes me as somewhat less than profound. Similarly, Professor Carr may have no leg to stand on; but the fact that he likes to quote anti-liberal writers and had at one time a high opinion of Neville Chamberlain's political sagacity (p. 617) does not prove it.

All in all, this is an excellent sample of a dubious species. It ought to be used widely, but with discrimination and in awareness of its dual character as a substitute.

HANS J. MORGENTHAU.

University of Chicago.

Vergleichende Rechtslehre. By Adolf F. Schnitzer. (Basel: Verlag für Recht und Gesellschaft. 1945. Pp. xii, 497. 11.40 sw. frs.)

In this first major study in comparative law to come out of postwar Europe, a Swiss authority in the field of private international law attempts to establish comparative law as a "science." Despite the numerous merits of the book, its claim to constitute a systematic treatise on a now established legal science is not borne out by its contents.

In an introductory chapter, the author, after giving a brief history of the study of comparative law, lays down the methodological claim regarding its aims and character. According to Schnitzer, the science of comparative law is one of the basic sciences in the field of law, representing a kind of counterpart to the more abstract and conceptual "general theory of law" or jurisprudence. Of the two major chapters, one constitutes an abridged, rather skeletal, universal history of law, ranging from primitive law to the legal systems of Islam and Oriental peoples; the other presents a comparative study of certain legal institutions, restricted to the field of civil and commercial law. Both chapters excel through an abundance of material and comment, although the author is at his best in the realm of modern private law. His treatment of primitive and exotic systems, where he often contents himself with surveys of literature and reference to major codes and similar legal sources, is somewhat less satisfactory.

These chapters, however, fail to establish comparative law as a science and a system. In the historical part, comparative methods give way to pure history. In the institutional part, comparison becomes a kind of *l'art pour l'art*, where one asks in vain why, *e.g.*, certain subtle details of the law of succession are made the subject of exhaustive comparative inquiry. This, to the reviewer, shows that comparative law, far from being an autonomous science, is at best a technique or method, an auxiliary science to be applied in what appears to be the only genuine sciences in the legal sphere: history of law (which, under theoretical viewpoints, also comprises the analysis of current legal systems), sociology of law, and legal philosophy (in the sense of the German *Allgemeine Rechtslehre*). From these, comparative law receives its programs, and there—as the masterly studies of Max Weber show— it fulfils a legitimate scientific purpose. That, moreover, it has an eminently practical purpose as a method used in the preparation of legislation (legal reform) will not be denied. All this, however, does not render it more autonomous than a comparison of, say, certain economic institutions would make "comparative economics" a science in its own right.

Such methodological objections in no way detract from the merits of a work which, through the freshness of its approach and its rich material, should make interesting reading for students of legal history and com-

parative law, particularly those to whom the Continental approach and systems are less familiar.

JOHN H. HERZ.

Washington, D.C.

Administrative Law: Cases and Comments. By WALTER GELLHORN. (Brooklyn, N. Y.; The Foundation Press. Second Edition. 1947. Pp. lxxxix, 1138. $7.50.)

The first edition of Professor Gellhorn's casebook on administrative law was published in 1940. It was warmly greeted by teachers of public law, both in law schools and in political science departments, as a brilliant addition to the literature in this fast-growing field of specialized study. They will surely welcome the appearance of a second edition. The qualities of the first edition characterize the second: enormous industry, a wide-ranging scholarship, a sure touch for the right case, and spirited writing. For this is not a conventional collection of cases, or even of cases and "materials." This remains a combination of cases, materials, and "comments," and in this respect the book is quite unique. The comments are more or less extended discussions by the author of many special aspects of the subject, going far beyond the customary case-book footnotes in filling in the interstices which are the inevitable accompaniment of a list of selected cases, however extended the list may be. The book, then, includes law cases, cuttings from law review articles, government reports and books, some statutory material, and several hundred pages of textual analysis by the author. All in all, it is a rich diet.

It is chiefly interesting to note what changes Professor Gellhorn has made in his book, after seven years of experience with it and its critics. The major adverse criticism of the first edition was that the second chapter, on the separation of powers, was much too long and detailed, or altogether out of place in a book on administrative law. The chapter ran to some 125 pages, and included materials on such topics as the legislative divorce, the power of various branches of government to punish for contempt, the removal power of the president, the holding of executive positions by legislative officials, the doctrine of the political question, the legislative courts, advisory opinions, and declaratory judgments. These subjects more properly belong to a course in constitutional law, and hardly deserve to crowd out the materials which bear more directly upon the subject. In contrast, a second major criticism of the first edition was that the chapter dealing with the scope of judicial review of administrative determinations was too short, and failed to give enough examples to illustrate properly how judicial review varies from one function to another. Still another criticism was that no attention was given to the important

doctrine of *res judicata* as it applies to administrative proceedings, and very little to the question of the exhaustion of administrative remedies.

The new edition takes these criticisms into account. The chapter on the separation of powers was deleted altogether, and a new chapter was added dealing with administrative proceedings and *res judicata*. The dropping out of the material relating to the separation of powers is in sharp contrast with the Frankfurter and Davison casebook (1932), which dealt primarily with this subject, and approaches the plan of the first casebook in this field, that of Freund (1911), which ignored it altogether. Since the cases dealing with this subject are given in all constitutional law casebooks, their omission from a collection on administrative law is probably justifiable from a teaching point of view. Political science teachers, however, interested in some of the broader and more philosophical elements in the background of administrative law, will miss such old stand-bys as Maynard v. Hill, the Myers and Rathbun cases, Sterling v. Constantin, and Gordon v. United States. Of course, this deletion permits ampler treatment of the cases dealing more directly with the administrative process strictly speaking. The other major change is that Professor Gellhorn has doubled the length of the chapter dealing with the scope of judicial review of administrative actions, even though in his preface he calls attention to the fact that actually "problems of judicial review are under consideration throughout the book."

The new edition is longer than the first by some 150 pages. The introductory chapter is about twice as long, and most of the material is new, including a long cutting from the Report of the Attorney-General's Committee on Administrative Procedure (1941), of which Professor Gellhorn was director of research. The second chapter, on the delegation of powers, includes the same number of pages as before. It is gratifying to note the absence from Chapter IV, on "Adequacy of Notice," of the extended discussion in the first edition of the exciting subject of service of summons by mail. An important shift of emphasis in Chapter V, "Some Elements of Fair Administrative Procedure," is that forty-four pages are devoted to the question of the use of compulsory process to obtain evidence, as compared with only eleven pages in the first edition. It is regrettable, however, that Professor Gellhorn has dropped out of the revised edition Judge Anderson's great opinion in Colyer v. Skeffington, 265 Fed. 17 (D.C., Mass., 1920), with its brilliant inquiry into administrative lawlessness. (" . . . A mob is a mob, whether made up of government officials acting under instructions from the Department of Justice, or of criminals, loafers, and the vicious classes"). One may suppose that a good argument can be made for leaving it out, but it was superbly good reading, and its lively recital of facts dramatized for the student an important example of over-zealous administrative behavior. The new chapter on *res judicata* in-

cludes eight cases and digests of many others, all fresh material not appearing in the earlier edition.

The chapter on methods of obtaining judicial review is half again as long as it was in the first edition. Added emphasis is particularly given to the subject of the declaratory judgment; in the first edition, there was merely a seven-page comment by the author, whereas now twenty-seven pages are given over to the subject, including five cases as well as extensive notes. In addition, in the first edition, Professor Gellhorn scarcely touched upon the important question of the exhaustion of administrative remedies (two and one-half pages); in this edition, the discussion of this topic is spread over twenty-six pages. The final chapter on the scope of judicial review has 120 pages in place of fifty-nine. This part of the book now offers a much greater variety of examples of the nature of judicial review in different situations. While this casebook centers its attention mainly on the administrative process as such, including notice, hearing, the necessity of findings, the process of proof, and the other elements of fair administrative procedure, it is all to the good that more space is devoted to the broad issues involved in the theory and practice of judicial review. In the last analysis, judicial control is important, and judicial review does tend to set the over-all boundaries of power and discretion within which administrative officials customarily maneuver.

The materials given in the appendices of the second edition are all new. Here Professor Gellhorn has reprinted the Federal Administrative Procedure Act of 1946, the House report on the bill, and the Model State Administrative Procedure Act, approved in 1946 by the National Conference of Commissioners on Uniform State Laws.

It would be easy to find fault with a collection of cases, materials, and comments extending well over a thousand pages. The present reviewer believes, for example, that Professor Hart's table of contents (*An Introduction to Administrative Law*, 1940) reflects a more meaningful, useful, and subtle arrangement of the main topics and subtopics of administrative law. As an aid to students, it would have been desirable for Professor Gellhorn to reprint, in full, at least one statute creating an administrative agency. One might wish to see more material dealing with the federal judicial control of state administrative agencies. Perhaps more attention might have been given to the techniques of administrative agencies. But, all in all, this book is first-rate, and the second edition is a considerable improvement over a first that set a very high standard for itself. The book is stimulating and endlessly provocative, and "teaches well." Students used the first edition with profit; they will enjoy the second quite as much. Administrative law is still in the stage of growing pains, and scholarship in the field is still exploratory. Its lines of classification and principles of organization have not yet hardened, and in the absence of a consensus

on the subject, there is much to be said for teaching administrative law in Gellhorn's way. Each of the recent casebooks—those by Stason (1937), Maurer (1937), and Sears (1938)—has its own merits, but it seems to the present reviewer that, for all round usability, Gellhorn, like Abou Ben Adhem, leads all the rest.

DAVID FELLMAN.

University of Wisconsin.

Administrative Behavior. By HERBERT A. SIMON (New York: The Macmillan Company. 1947. Pp. xvi, 259. $4.00.)

The sub-title of this book is "A Study of Decision-Making in Administrative Organization." In his preface, the author disavows any attempt to develop a "theory" of administration, but he does regard decision-making as the heart of administration and he thinks that the vocabulary of administrative theory must be derived from the logic and psychology of human choice. He presents his thesis in an introductory chapter which also serves as a preview of the chapters to follow. The processes of decision have been neglected, he believes, because of the notion that decision-making is confined to the formulation of over-all policy. On the contrary, the task of "deciding" pervades the entire administrative organization quite as much as does the task of "doing." A distinction is drawn between decisions that lead toward the selection of final goals, which are called "value judgments," and those that involve the implementation of such goals, which are called "factual judgments."

A second introductory chapter is devoted to a critical analysis of the "principles of administration" that are found in the current literature of administrative theory, with a view to showing their inadequacy and the need for their development in line with the author's thesis. Readers of the *Public Administration Review* will recall the author's previous contributions on this subject. For example, he calls attention to the conflict between the principles of unity of command and specialization, with the observation that while there is much support for the former, in actual practice the need for specialization is to a very large degree given priority over the need for unity of command.

In the succeeding eight chapters, the writer further unfolds and elaborates upon his thesis, with attention to such matters as the relative rôles played by value and factual questions in administrative decision, the concept of "rationality" in decision-making, the contrast between the psychological and the logical elements in the process of choice, including the ways in which an organization modifies individual behavior, the equilibrium which results when a group of people permit their decisions and their behavior to be influenced by participation in an organization, the rôle of authority and vertical specialization in organization, the process

of communication, and the concepts of efficiency and organizational loyalty. In a concluding chapter, the structure of organization is examined and some conclusions offered with reference to "the next steps" research in administration must take. In an appendix, the author addresses himself to the familiar question, "What is an administrative science?" There is no place, in his opinion, for ethical assertions in the body of a science, but he recognizes that ethical preferences will enter into the making of decisions. A commendatory foreword to the volume is contributed by the well-known business executive and writer, Chester I. Barnard, to whom the author recognizes a special obligation.

This reviewer finished his reading of the book prepared to accept the author's own evaluation of his work, namely, that although it "has not led us to any definitive administrative principles, it has provided us with a framework for the analysis and description of administrative situations, and with a set of factors that must be weighed in arriving at any valid proposal for administrative organization."

LLOYD M. SHORT.

University of Minnesota.

William Allen White's America. BY WALTER JOHNSON. (New York: Henry Holt and Company. 1947. Pp. 621. $5.00.)

The literature about William Allen White bids fair to be as prolific after his death as the late editor was prolific in life. His *Autobiography* appeared posthumously in 1946 and later a collection of *Select Letters*. Now, within another year, Walter Johnson presents a full-length biography. *William Allen White's America* lives up to its title, for the small-town editor is painted on a broad canvas of sweeping national and international events. It is not too much to say that Johnson's biography of White is a history of the last half-century of American life as it flowed before the eyes of Emporia's first citizen.

Any biographer of a man who has written his *Autobiography* confronts certain difficulties. Johnson's *William Allen White's America* is in a sense a competitor of White's *Autiobiography*. For a man as articulate as White, his biographer does not find it easy to retrace his life without repeating the *Autobiography*. Johnson has done as good a job as could be performed under these circumstances. He tells the whole story, but avoids repetition and corrects some errors of memory and adds some facts the *Autobiography* forgot or did not choose to recall. Wherever possible, Johnson, as a good biographer should, has allowed White to speak for himself from his voluminous correspondence and numerous editorials and magazine articles. The author has engaged in neither carping criticism nor fulsome praise, but tells his story simply and accurately. Wisely, Johnson

has refrained from the natural temptation to imitate the flashy and sometimes dazzling style employed by his subject.

What is the verdict upon White? He stands the tests of scholarship remarkably well. His importance lies, as his biographer well says, in his being a "folk hero" of the American middle class of the early twentieth century. He was, of course, far more articulate than most members of that class, but he expressed their ideals of good will and their optimism about human improvement, though his confidence in human perfection obviously declined with the passing years. Though White was a symbol of small-town America, he was a symbol of its best and not of a cross-section. Main street joined the Ku Klux Klan, but White, representing the better and more intelligent nature of Main street, fought the Klan successfully.

In his last years, White as the symbol of the Middle Class of the West was called upon to lead American public opinion to participation in world affairs. In the perspective of time, these services will assume larger proportions when scholars examine how narrowly America failed to adjust the balance of the old world in those fateful months after the fall of France.

For years to come, political scientists as well as historians will turn to Johnson's *White* as a source of valuable information on the versatile Kansan who in politics, journalism, and literature so ably reflected the hopes and better nature of a civilization as yet not subject to technology. In the long perspective of time, White may become a pathetic symbol of a passing phase of Western American culture, even as the buffalo and the Indian. The uniqueness of White's life adds a footnote to American political and journalistic life in the fact that there are no claimants to his vacant chair.

Political scientists will read Walter Johnson's *William Allen White's America* with great profit and carefully ponder its significance for politics and government, to glean wisdom and understanding. Specialists in political parties will wish to analyze the nature of this great Progressive who was a New Dealer by thought and declaration, yet never voted the Democratic ticket—a fact with profound meaning for students of the American party process. The volume is a truly valuable contribution to the literature of American political biography.

JASPER B. SHANNON.

University of Kentucky.

Lincoln the Liberal Statesman. BY J. G. RANDALL. (New York: Dodd, Mead and Company. 1947. Pp. xvi, 266. $4.50.)

Although six of these essays have already appeared in learned journals, the author did not spare himself in revising, rewriting, and annotating before including them in this volume. Not previously published in any form are the other two essays, "Moot Points in the Lincoln Story," the

first in the volume, and "Lincoln the Liberal Statesman," the last. The first essay, probably the most satisfactory and helpful to one who has only the traditional picture of Lincoln, makes clear, among other things, that, in the twenty-five years preceding his election to the presidency, Lincoln split no rails and was no "Bluejeans Williams" or "Sockless Simpson"; that the nomination for the presidency came not to Lincoln the failure but to Lincoln the outstanding lawyer and the leading Republican in Illinois, with more than a state-wide reputation; that Lincoln and Douglas agreed on a number of significant points, and that the Little Giant was a worthy opponent; and that Lincoln was no abolitionist. In "A Blundering Generation," Professor Randall strips wars of most of their glory and makes an excellent case against the inevitability of our Civil War. "The Unpopular Mr. Lincoln" contains evidence that amply justifies the title, the most significant evidence being "the backstage effort of leading Republicans in the late summer of 1864 to oust Lincoln *after he had been regularly nominated*" (p. 80). "Lincoln's Sumter Dilemma" shows a careful and critical historian at his best, in particular in considering and rejecting the suggestion that Lincoln's strategy was to put the Confederacy in the position of firing the first shot. In "The Rule of Law under Lincoln," we see the exercise of executive power grazing the arbitrary but used with distaste, restraint, and common sense. "Lincoln and John Bright" features a most happy meeting of minds of two liberals who never stood face to face. "Lincoln's Peace and Wilson's" gives an estimate of the high price that has been paid for the rejection of their programs and makes earnest plea for more sanity in our time. In the title essay, "Lincoln the Liberal Statesman," the author shows that Lincoln, conservative in procedure, making sure of his ground, was liberal in the purposes and content of his program. "If his conservatism was a kind of brake or saving common sense, liberalism was his vital spark" (p. 179). "Human rights meant more to him than profits" (p. 179); labor more than capital; a do-something government more than *laissez faire;* and, although "he did not burble about democracy" (p. 192), he was ever its tough-minded and realistic advocate, as he was of tolerance.

Thoroughly at home in the Civil War period, a leading authority on Lincoln, a master of historical materials and of historical method, Professor Randall again attains the high standard he has led us to expect of him. So discriminatingly does he make his selections from his vast storehouse and so clearly does he develop the points of which he treats that he offers additional light to the more than casual student of Lincoln and fresh suggestions to those who may be classed as Lincoln scholars. Nor does he fail to relate the experience of the past to the problems of the present and to remind us that this is "a time for greatness."

CLAUDIUS O. JOHNSON.

State College of Washington.

The Presidents and the Press. By James E. Pollard. (New York: The Macmillan Company. 1947. Pp. 866. $5.00.)

Shortly after this book appeared, several reviewers referred to it as a valuable contribution to the history of American journalism—an accurate summary as far as it goes, but an incomplete appraisal of the Pollard study. The volume does more than synthesize and interpret newspaper reactions to presidential policies from Washington to Truman. Dr. Pollard's major concern is not with editorial policy, but rather with the interplay between presidents and the press. The implications of this interplay on public opinion are regarded by the author as more important, it seems to this reviewer, than any contribution he has made on the behavior of the newspapers.

Dr. Pollard's major emphasis is on the thirty-two men who have held the chief magistracy and how successfully or how dismally each made use of the press in a reckoning with the people by way of the daily journals. The second theme of his double-barreled assignment was to study the treatment of each president by the newspapers. For the most part, single chapters are assigned to each White House occupant.

Since the book is not intended as a treatise on editorial policy, the great editors—the Baches, Fennos, Freneaus, Greens, Greeleys, Raymonds, Medills, and other thunderers—are secondary characters in the volume, even though Dr. Pollard recounts the friendly alliances that occasionally developed between chief magistrates and newspaper men (usually souring as time wore on during an administration), and the conflicts and often bitter enmities that arose between them. Dr. Pollard shows keen interest in the evolution of the White House press conference, fathered in Wilson's time. When the author takes up an account of this democratic mechanism, we see the newspaper editor in eclipse and the Washington correspondent emerging into the spotlight.

The historical matrix in which Dr. Pollard imbeds his data may influence some readers to think of his work as a kind of newspaper "history," embellished with political icing, but the thoughtful critic will describe it as a study of opinion management. How presidents sought to secure public support through press channels and how newspapers reacted to various issues which chief executives thought it desirable to put to the fore—this is the focus of *The Presidents and the Press.* It will not do to classify the Pollard book as newspaper history alone.

Dr. Pollard sets limits to his study. Little attention is paid to the manipulation of opinion during presidential campaigns. There are few portrayals of candidates on the hustings, and there is not much analysis of campaign strategy and tactics on the opinion front. As an example of this limitation, Franklin D. Roosevelt's skill in dealing with the working press at White House conferences gets full treatment, but Roosevelt as a cam-

paigner receives little interpretation. The association of presidents with political advisers, national party chairmen, press secretaries, and party publicity chieftains is not fully developed; nor does Dr. Pollard stress the influence of such persons in helping to shape an opinion policy. But the author set himself such a big task in dealing with data now distilled in the pages of his book that we can forgive him for setting some metes and bounds to his undertaking.

At the close of each chapter, usually devoted as has been said to a single holder of the presidential office, Dr. Pollard writes admirable interpretations and summaries. It is to be regretted that the author did not prepare as a final chapter an over-all summary of the major trends and policies in presidential opinion management. In a democracy, as Lindsay Rogers once remarked, a president must take into account the people's hopes and fears, their desires and their warnings, their intelligence and their prejudices. The president who has the wisdom to recognize the importance of the public's demands and desires, and to take account of the psychological needs of his people, will lay the foundation for a sound policy of presidential "public relations." Bulwarked by a thoroughgoing grasp of his subject-matter, Dr. Pollard could have made some useful generalizations on the handling of opinion problems by the man who holds the most difficult administrative job in the country, made doubly trying because of the political nature of the presidential office.

Perhaps Dr. Pollard was unwilling to draw conclusions by contrasting the skill of a Franklin Roosevelt with the record of a Herbert Hoover. The latter, Dr. Pollard reports, exhibited "caprice and ill will toward the press" and was guilty of failure to take the public into his confidence; Roosevelt was "a master of the art of applied psychology in the field of broad public relations." Perhaps the author felt that no lesson could be learned by contrasting Taft's stumbling methods with Theodore Roosevelt's shrewd manipulations. The times in which men govern, their training and prior experience before reaching the presidency, their mental elasticity, and other factors will affect what they do in attempting to capture public support. Dr. Pollard's historical account seems to show, however, that administrative and political success correlates with deft handling of a president's "public relations," or, if this deduction is too bold a generalization, that the president who neglects his public opinion problem, or who handles it inexpertly and sporadically, is flirting dangerously with failure.

The balanced judgments in *The Presidents and the Press* grow out of Dr. Pollard's extensive and excellent training in two fields, history and journalism.

RALPH D. CASEY.

University of Minnesota.

Horace Greeley and the Republican Party. By Jester Allen Isley. (Princeton, New Jersey: Princeton University Press. 1947. Pp. vii, 368. $4.50.)

This book is a study of the influence of Horace Greeley, as publisher of the *New York Tribune,* on the eight critical years preceding the Civil War and on the formation of the Republican party. The author has made an exhaustive survey of Greeley's editorials as well as of the news columns of the *Tribune* and his personal correspondence. The book is unique in that it presents a penetrating analysis of the relation between politics and the press. It is well documented, well argued, and illustrated by a number of excellent cartoons.

The thesis of the author is developed as follows. At the Republican convention, convened in the Wigwam at Chicago May 16, 1860, Greeley opposed as too radical the eminent New York senator, William H. Seward, for the presidential candidate. He gave his support to Edward Bates, Missouri Whig who had manumitted his slaves, because he thought such a candidate would win Southern votes. Out-maneuvered by the Lincoln faction, however, he quickly accepted the verdict of the convention and backed the Lincoln candidacy. He viewed Abraham Lincoln as a conservative who stood for the containment of slavery where it existed and one who neither would ask for outright abolition nor would precipitously invade the Southland.

Through his *Tribune,* Greeley supported the view that the belligerent language of the Southern politicians in the campaign of 1860 was merely a political weapon. He discounted any threat of secession and maintained that the Union would stand of economic necessity. Moreover, the free workers and the small farmers, he contended, would form a bulwark of strength in the Southern states. All this group needed to overthrow peacefully the slavocracy was the support of Northern statesmen. He predicted that thousands in the South would vote for Lincoln and pointed to the number of Republican clubs recently organized there.

Greeley was so certain of his analysis that he boldly declared: "We dare the Fire-eaters to submit the question of secession because of Lincoln's election to the popular votes of their own people." If they should vote themselves out of the Union, "we shall be in favor of letting them go in peace." Often he had indicated in his *Tribune* columns the conditions under which secession might take place. First, there must be free and open discussion of the problem, followed by a referendum of the people, and lastly peaceful negotiation in Washington between representatives of the withdrawing state and the Government. This peaceful procedure of secession, says the author, formulated public opinion in the North, which quickly became stunned and outraged by the haste with which the first seven states withdrew from the Union a few weeks after the election. In

the eyes of the *Tribune* followers, the author concludes, these states had ignored Greeley's conditions for peaceable secession. Accordingly, Northern sentiment hardened. *Tribune* readers placed the blame on a small, unscrupulous cabal unable to achieve its end through any means other than battle.

Greeley is portrayed as a man who hated war and who tried to avert it. But he consistently misjudged the public opinion of the South. Slavery, he thought, could be ended by economic nationalism. Thus he endorsed the program of free lands and public improvements, and urged Eastern labor to "go West." Greeley had opposed the Missouri Compromise as a shackle on freedom. He accepted the Compromise of 1850 as a temporary expedient, but he revolted against the Kansas-Nebraska Bill. Believing firmly in the eventual solution of the slavery problem, he had labored for a conservative Republican platform and nominee in 1860. Yet by his ignorance of Southern thinking he unwittingly helped to ignite the flames of war. His anti-slavery crusade ended in the gun-fire of Sumter!

MARY EARHART DILLON.

Northwestern University.

The Progressive Movement of 1924. By KENNETH CAMPBELL MACKAY. (New York: Columbia University Press. 1947. Pp. 298. $3.75.)

Current speculation and discussion of a third party in 1948, and of the proper rôle and procedure for liberal and progressive elements to adopt, make pertinent the publication of this carefully documented and thorough study of the progressive movement in 1924, led by the late Robert M. La-Follette. While the author believes that protest movements in American politics are "strands of an unbroken thread," he indicates that several unusual factors prevailed in 1924. The most significant of these was the alliance of organized labor with farmers and with Socialists, which had hitherto been regarded as impossible, and which seemed to presage a genuine farmer-labor third party. Another was the support given by upper middle-class intellectuals, chiefly in the East. The usual lunatic fringe found in minor party groupings was of little importance, but during the earlier development of the Conference for Progressive Political Action a small, but very noisy and aggressive, minority of Communists attempted the strategy of infiltration, although publicly and unequivocally repudiated by La Follette. During the years 1921–24, the CCPA took the initiative in organizing the progressive forces and in providing meagre administrative machinery. At its fourth meeting, in July, 1924, La Follette and Wheeler were endorsed for president and vice president. The platform, dictated by La Follette, drew a telling indictment against the economic and political forces then dominating America, and presented a platform of twelve points. The ancient agrarian enemy, private monopoly, was

declared the "supreme issue," and a comprehensive program of economic and political reform, which reiterated the battle cries and panaceas of an earlier day, was presented.

The author makes clear the insuperable difficulties which confronted the coalition of progressive forces. In the first place, the prosperous and complacent America of 1924 was indifferent to the revival of the liberal tradition, and the nation's industrial and financial leaders and their political spokesmen, headed by the cautious Coolidge and the flamboyant Dawes, were bitterly hostile to the Progressive platform and to the philosophy of La Follette. Second, the basic weaknesses of any third-party movement in this country were quickly apparent. These were: inadequate organization at all levels, the varied technical requirements of state election laws, the lack of state and local tickets, and, above all, insufficient campaign funds. There was never enough money to conduct even a most modest campaign; individual contributions from labor union members and farmers were insignificant.

The movement was attacked as radical and dangerous by conservative interests, which used with devastating effect the weapons of fear, of intimidation, and of distortion. Labor was indifferent, and a providential rise in certain agricultural prices led many farmers to support Coolidge.

Approximately 51 per cent of the electorate went to the polls in the sweeping Republican victory. La Follette carried only Wisconsin, but received 16.5 per cent of the total vote of twenty-eight millions. To the Progressive total of 4,826,471, the author estimates that the Socialists contributed one million votes, the agrarians two and one-half million, various liberal groups, including the American Federation of Labor, eleven hundred thousand, and the railroad brotherhoods two hundred thousand. In eleven states of the Midwest and the Trans-Mississippi region, the Progressive ticket ran second to the Republican, much of its support coming from liberal Democrats. Support for La Follette in the East was confined chiefly to a few urban areas where some organization and labor leadership existed. The Western vote was essentially a protest vote rather than an endorsement of a new party alignment which influential Eastern progressives desired.

In February, 1925, the basic groups comprising the movement agreed amicably to end the temporary coalition and to go their respective ways; in June, 1925, came the death of Senator La Follette. It was necessary for progressives to wait until the New Deal era for a partial realization of their objectives.

Dr. MacKay writes with sympathy and with understanding not only of the progressives, but also of the American party system. He is keenly critical of both major parties, but fully aware of the obstacles confronting any minor party constructed upon the basis of genuine belief and a clearly

stated program of action. Included in the extensive bibliography are heretofore unavailable manuscript collections and revealing personal interviews with many of the leaders of the 1924 movement.

THOMAS S. BARCLAY.

University of Illinois.

Congressional Elections, 1896–1944. By CORTEZ A. M. EWING. (Norman, Okla.: University of Oklahoma Press. 1947. Pp. xiii, 110. $2.00.)

Professor Ewing has provided the political scientist and the professional politician with a useful statistical handbook. He has presented figures of almost every conceivable sort concerning the election of members to the House of Representatives for the fifty-year period covered by the book. For good measure, he has thrown in other statistics which cover the period prior to 1896.

The book possesses most of the virtues and vices of any statistical analysis of party history. Many of the tables and charts are interesting and useful. Some have at best limited value. A catalogue of the necessary and unnecessary statistics to be found in *Congressional Elections* is too long to repeat in detail here. One may find the ratio of members of the House of Representatives to population from 1790 to 1944, the total number of Democrats, Republicans, and third-party representatives elected and not elected for the past fifty years, and the "efficiency rating" of the major parties in terms of their ability to get the same vote for their congressional and presidential candidates. Mixed in with these figures are others on the relative margins of victory by which Republicans and Democrats have been elected in various areas, at various times, and under various circumstances.

Any statistical history of American parties is as strong or as weak as the narrative which accompanies the statistics. Wisdom in interpretation is as necessary as the statistics themselves. It is, of course, true that the figures may be useful even if the narrative is not. The student may have the insight necessary to reinterpret the figures of the author. The reader of any book on election statistics is constantly struck by the fact that authors in this realm of research seem to read their own assumptions into their statistical findings, but somehow convince themselves that they are making a scientific study. These authors apparently begin with certain preconceived notions which they force into their research pipe at one end and are pleased to draw out again at the other. They seem unaware that preconceived notions arrived at non-statistically gain little significance when expressed later in statistical terms.

Professor Ewing draws some conclusions from his research which have been accepted by political scientists for a long time. He draws other conclusions which are at best doubtful. For example, he treats at considerable

length the question of the importance of the President in the election of members of the House of Representatives. Professor Ewing concludes from his statistics that the "coat-tail theory" of congressional victories is vastly overrated. He presents figures for several presidential campaign years which show that a larger number of voters cast ballots for congressional candidates than for presidential candidates of the same party. He concludes, therefore, that the candidates for Congress depend only slightly, if at all, upon the popularity of the presidential candidate. The author fails to note that his figures apply only to the specific elections which he uses as examples for his thesis and not to all elections. Because Democratic congressional candidates managed to gain wider support than the Democratic presidential candidates in 1904 and 1908, it does not follow that presidential candidates do not help congressional candidates to victory in other years. As he himself points out, the relatively higher congressional note in those years resulted from the division between the gold and the silver Democrats. One could point out, on the other hand, that Democratic candidates for Congress were more frequently victorious when running with President Roosevelt than when running in any of the off-year elections except 1934, and that except in 1934 the party in power has always lost seats in off-year elections. Anyone who lives in a state where the Republican and Democratic strength is about equal knows full well that a presidential victory almost invariably means a congressional victory for the same party in the election. Professor Ewing's account of the relative drawing power of presidential and congressional candidates leaves out of consideration the recent phenomenon noted by most political observers, that a large vote over the past sixteen years has meant a Democratic victory and a small vote has meant a Republican gain or victory. Democratic congressional candidates are much more likely to win in presidential years when the voters come out in vastly greater numbers than in off-year elections, and surely the presidential candidate is responsible for the larger vote.

There are several other items in Professor Ewing's narrative which might be questioned. He suggests, for example, that the function of a third party in a state is that of maintaining "the purity of the non-ideological character of our party system" because it prevents the major parties from crystallizing "any preponderant opinion for sacerdotalism."

Some might question his statements that the future of splinter groups is hopeless because they have won but thirteen times in the 4,452 congressional contests in which they have participated during the fifty years covered by the book. This is perhaps true, but it might also be argued that splinter groups have not won because of ineptness or bad timing or poor choice of issues upon which to fight a campaign.

In spite of lapses in the narrative, political scientists may well find the

book a handy reference work for important as well as merely unusual figures on the elections of the past fifty years.

HOWARD R. PENNIMAN.

Yale University.

You're the Boss. BY EDWARD J. FLYNN. (New York: The Viking Press. 1947. Pp. 244. $3.00.)

This is probably the frankest and most candid exposition of the rules and gimmicks of practical politics to come from the pen of an urban political leader. Indeed, this apologia for bosses and machines from a self-styled "good" boss is so complete that one wonders if the author realizes the extent of his own self-revelation. The autobiography covers the span of politics from World War I to the present, and details many Bronx and Tammany battles, with many interesting anecdotes about Charles F. Murphy and his successors. Modest but revealing details are included on the recent Democratic national conventions and presidential elections. The greatest contribution, however, is in the intimate description of the organization and operation of an urban political party, and the volume enriches the literature on political machines. Many of the contentions cannot be accepted, but neither can they be ignored by teachers of party government as it exists.

The uninitiated lay reader will be shocked if not repelled by the realism with which the boss casually relates what he calls the "political facts of life." An illustration of the freedom from ethical considerations was shown in the 1932 Democratic convention where Huey Long's delegates were seated without any recourse to valid credentials and merely because the Kingfish pledged himself personally to F.D.R. It is boldly acknowledged that the ordinary delegate to a national convention is a futile and ineffective individual because "considerably less than 100 men . . . really dictate what occurs." Flynn's defense of patronage bears resemblance to that of Plunkitt of Tammany Hall. Spoils, he notes, originated in "antiquity" and "if it is immoral, then man is immoral." Government and spoils go together because "we cannot have government without elections, elections without organizations, or organizations without a 'spoils system' " (p. 25). The Flynn-Roosevelt quarrels over patronage are related, and the former makes no secret of his irritation with the President's failure to honor the rules of the game. Though many pages are given to Roosevelt, a disappointing feature is the failure to describe the techniques, strength, and weakness of F.D.R. as a party leader.

With great emphasis upon "regularity," no opportunity is lost to deride independents, reformers, "apostate" Democrats, idealists, and the "motley mob of political hacks that cluster periodically about benign old jurists and smart boy-gangsters who raise the flag of 'Fusion.'" "New Deal

amateurs" who meddled in campaigns are excoriated, and there are some notes on the rift between them and the organization Democrats. Bad machines, Flynn asserts, can be fought successfully only from within the party, and much sound advice is given both on this principle and how to act upon it. The author's strong emphasis upon using the primaries for obtaining better party leadership and nominees is to be welcomed.

The book concludes with a plea to men and women "to come down off their high horses" and get into party politics for the purpose of bringing about good government. Compulsory citizenship courses are recommended as a device for bringing graduates into practical politics. One wonders, however, how much this will inspire the young reader in view of the preceding pages which have certainly raised doubts about the accuracy of the book's title.

HUGH A. BONE.

Queens College.

The British General Election of 1945. By R. B. McCALLUM AND ALISON READMAN. (London: Oxford University Press. 1947. Pp. xv., 311. $3.50.)

In the form of a detailed study of the progress and results of the general election in Great Britain in 1945, the authors have presented a useful account of both the legal framework and the flesh and blood of British electoral campaigns in general. They have successfully undertaken to write about an election on the basis of material gathered in the heat of the controversy while much ephemeral subject-matter is available rather than depending upon a survey of the sources after the event has receded from active memory. Yet their vision is rarely marred by the immediacy of their material, and their views with respect to the outcome of the campaign are not intruded into their writing.

The volume describes the break-up of the wartime coalition and the setting in motion of the general election machinery. The issues of the campaign are analyzed; the authors make clear that the whole record of the Conservative party since World War I came under review, although some scare or "stunt" issues were raised. The authors investigate the selection procedure and background of the candidates, and discuss at length the usually neglected election addresses. They find that the addresses are more often expressions of faith in the party than platforms of the candidates. The rôle of the radio and the press in the campaign is described. The effect of the plural voter in both the university and the business constituencies is considered. Particularly interesting is the comparison of the pre-election forecast of the British equivalent of the Gallup poll with the actual results. With respect to party percentages, the British Institute of Public Opinion was accurate within one per cent. The results of the election are studied with special stress on the exaggeration of the

popular majority produced by the single-member district system. In an appendix, the authors make a commendable effort to devise a statistical means of forecasting election results through the percentage of swing in the popular vote which would be necessary to supplant the majority party in the House of Commons. As students of government, the authors appreciate that political science becomes more useful as it graduates from the historical and analytical stages to the normative.

In place of the usual party clichés, the authors are refreshingly willing to search for the real explanation of the results. Sometimes they fall into the trap, however, of making statements with reference to public opinion for which they adduce no proof. For example, concerning Mr. Churchill's opening radio speech prediction that to vote Socialist would be to saddle the country with totalitarianism, the authors state that "no one took these warnings seriously." Except for very few of these unsupported statements of opinion, the authors have made an admirable study of the general election of 1945, and one which can be used profitably as an epitome of the British electoral process.

EDWARD G. LEWIS.

University of Texas.

Gobierno y Administracion de la Republica Argentina. By SEGUNDO V. LINARES QUINTANA. (Buenos Aires: Tipográfica Editora Argentina. 1946. Two volumes. Pp. 425, 440. 65 Argentina pesos.)

During the last fifteen years, Segundo V. Linares Quintana, who is a professor in the law faculties of the Universities of Buenos Aires and La Plata, has published a steady stream of books, pamphlets, and magazine articles dealing with various aspects of Argentine and comparative government. Neither war nor revolution seems to have retarded his schedule of production or impaired the quality of his work. Now he has completed this two-volume treatise describing and analyzing the government of his own country. Without doubt, it is the best book he was ever written. An unusual amount of research and a great deal of clear thinking seem to have gone into its preparation. It is, moreover, a very unusual work, for it represents a synthesis of the traditional American and Latin American methods of approach. It is the product of a Latin American scholar who has become familiar with the aims and techniques of United States scholarship.

The first volume begins, however, in the usual fashion of such Latin American books. Although it purports to be a discussion of Argentine government and administration, it devotes a number of sections and many pages to such matters as the nature of law, theories of the origin of the state, and the concept of sovereignty. Two chapters deal with the or-

ganization and functions of modern states. Nothing is said in these chapters, of course, that has not been said many times before with equal clarity and in greater detail. But it seems that every Latin American author of a work in the field of political science must pause briefly and with reverence before these subjects, just as a devout Chinese must make obeisance before the tombs of his ancestors. After this inevitable routine has been observed, however, Professor Linares Quintana begins a really masterful presentation of his subject. And it is at this point that the influence of American writers becomes evident. Instead of confining himself to a discussion of constitutional and legal provisions and court decisions, the author gives a well-rounded picture of the government in operation. He describes not only legal theories, but also political practices. In almost all Latin American countries, and certainly in the Argentina of Juan D. Perón, there are certain obvious limits to such a method of presentation. Any Argentine living in Argentina who pens criticisms of the existing régime must do so with the utmost discretion. Professor Linares Quintana is discreet. Yet he manages to put himself strongly on record in favor of constitutional democracy. He takes the supreme court of the nation to task for recognizing the leaders of the 1943 revolution as a *de facto* government, despite the dissolution of Congress. (The executive power, he says, is not the government, either *de facto* or *de jure;* it is only one of the government's three coördinate branches (pp. 104–106). In an earlier part of the same chapter, while discussing the recent decision to regulate political parties, he says—quite correctly—that the original draft of the proposal by a non-partisan group of experts was excellent, and would have met a long-felt need, but that the version finally adopted by the government "introduced numerous and substantial modifications, many of which did not accomplish" the law's announced purpose of furthering the public welfare.

This treatise has been conceived and executed on a broad scale. It deals not only with the organization of the Argentine government, but also with its activities. There are chapters on financial administration, social welfare, and the rights of labor. "Administration," as it appears in the title of the work, is interpreted somewhat more narrowly than in the United States. But it must be remembered that no other work by an Argentine author even attempts to describe the public administration. *Administrative law* has always been the nearest Argentine approximation, and of course it is not the same thing. Perhaps this volume by Professor Linares Quintana will set the fashion among his colleagues for a more realistic approach to the problems of government.

AUSTIN F. MACDONALD.

University of California.

The United States in World Affairs, 1945–1947. By John C. Campbell and the Research Staff of the Council on Foreign Relations. (New York: Harper and Brothers. 1947. Pp. xvi, 585. $5.00.)

This volume is a revival of the annual survey of United States foreign relations begun in 1931 by the Council on Foreign Relations, continued for ten years, but unfortunately discontinued in 1941. The first three of those earlier volumes were edited by Walter Lippmann, the others by Whitney Shepardson, always with the collaboration of the staff of the Council on Foreign Relations and more particularly of William O. Scroggs. All of this suggests the unusually high standard set in those ten volumes, which has, however, been fully maintained in the present volume under the able authorship of John C. Campbell and his assistants on the Council's research staff.

The treatment of our foreign relations for the two-year period covered by this volume is broken down into thirteen chapters, dealing with such problems as the world-wide responsibilities of the United States produced by the World War, the making of a proper peace in Western and Central Europe and in the Far East, the Good Neighbor policy in respect to Latin America, relief, reconstruction of world trade, security and disarmament, the United Nations, and the new competition for world power. These problems are treated separately, but also are related, as of course they must be if they are to be understood at all, to one another and to our own domestic problems and political scene. This is done skillfully and intelligently, and makes good reading.

Although largely factual and coldly objective as an account of these various events, situations, and problems, there seems to be an emphasis on the new (or newly appreciated) responsibility of the United States, on its tremendous power position in the world, and on the whole-hearted if somewhat cautious and rather realistic way in which those responsibilities are now accepted and are being carried out. There is vigorous debate throughout the country with respect to the appropriateness and good sense of particular actions or policies, but the general exposition in this volume tends to suggest that our postwar policy has, on the whole, been intelligently conceived, that the interests of the United States itself and of the international community have been kept reasonably well in mind, and that, in spite of hesitations and some blundering, the policies have been pretty well executed. If peace has not been achieved, that is hardly our exclusive fault.

A bibliography is appended, which is called "selected," but which covers forty pages and includes more than six hundred titles; and these titles, it is somewhat apologetically explained, "represent but a fraction of the literature touched upon in this book"—a pretty good indication of the vast number and extraordinary importance of present problems of foreign

policy, and of the difficult task before the authors of this volume. There is also a most useful chronology of events, covering a period of less than two years, but requiring nearly fifty pages; likewise an index. Altogether, the Council on Foreign Relations is to be commended warmly for reviving this series, which will again be annual; and Mr. Chamberlain and his associates should be congratulated on the excellence of their work.

CLARENCE A. BERDAHL.

University of Illinois.

Germany from Defeat to Conquest. BY W. M. KNIGHT-PATTERSON. Foreword by Lord Vansittart. (London: George Allen and Unwin, Ltd. 1945. Pp. 622. $5.00.)

At a time when the United States and Britain are about to rebuild Germany even faster and better than after the first World War, and for reasons at variance with the lessons to be drawn from two world wars, information on the first unsuccessful experiment to impose democracy on the reluctant Germans from outside should be welcome indeed. There is, of course, no scarcity of books on the Weimar interlude, the republic without republicans, the most perfect democracy ever devised on paper, and how it was strangled in the cradle by the forces of authoritarian reaction and militant nationalism no less than by exceptionally inept politicians. Such a contribution is the recent brilliant study by Geoffrey Scheele, which, however, is too sophisticated to be easily accessible to the policy-makers—who, after all, are too busy to read books, and who can familiarize themselves with the findings of political science only through their advisers, provided the latter read books and the former listen to their advice. The parallels between then and now are so persuasive that Military Government could have benefited immensely from a sociologically oriented and concise description of the failure of Weimar, which, in spite of the numerous volumes written on the subject, we still do not have.

He who hopes to gain such information from the book under review will be sadly disappointed. This huge volume has nothing to offer which has not been presented before, and the story of how Weimar was conquered by reactionary militarists in uniform and in civilian garb, by the technocrats of big business and the nationalist mentality of the conceited bourgeoisie, and how the so-called democratic parties were cornered by them, has been told by others much better. This reviewer, who believes in generosity toward honest scientific efforts, could not find a single praiseworthy feature in it; and the only extenuating circumstance he could think of is that it was written before V-E Day, at a time when intellectual warfare justified whatever device the enemies of National Socialism wished to apply. But even as an instrumentality of propaganda,

the book, disorganized, cumbrous, overburdened with details and figures, may seem utterly useless.

It is the story of German nationalism, beginning with the period before the first World War, and trying to follow its course through the war and the development of Weimar to the advent of Hitler. The narrative is conducted chronologically along the lines of Epstein's *Annual Register*, which seemingly was a main source of information as well as the inspiration for the pedestrian and unliterary style. It is adorned by lengthy verbatim excerpts from books written in similar vein, the German and foreign press, Reichstag debates, and numerous secondary sources in whose selection the author demonstrates an unerring preference for those which are of dubious value. Were the book better organized, and had the material been arranged better, it might serve as a sourcebook for facts and figures; but even the facts are frequently inaccurate and the figures meaningless. There is hardly a page without misstatement, misspellings of names, and printers' errors (e.g., incombatibilities on p. 476), not to speak of misinterpretations wherever there is evidence of such ambition. The best that can be said of this piece of work is that the publishers brought out a handsome volume—which is a rather melancholy reflection considering how many much better books cannot find a publisher at all. By recommending it as a "book of remarkable accuracy and insight," Lord Vansittart did not add to his reputation.

KARL LOEWENSTEIN.

Amherst College.

The Development of the Soviet Economic System. By ALEXANDER BAYKOV. (New York: The Macmillan Company. 1947. Pp. xv, 514. $6.00.)

Baykov has described Soviet planning techniques and instrumentalities and analyzed their effect upon the Soviet economy in the fields of industry, agriculture, trade, labor, and public finance. His study is designed primarily for economists, but there is much that will absorb the political scientist as well. Baykov makes clear that the automatic controls of a capitalist economy no longer function under socialism. The political scientist and lawyer are called upon to draft legislation and devise administrative techniques on the grand scale required when nationalization of the means of production occurs, and when full employment eliminates the effectiveness of economic controls.

A political scientist will regret that Baykov is more interested in economics than public administration. The author introduces a problem, but often contents himself with a brief description of the machinery of administration devised to meet it, while examining in detail the effects of the use of the machinery. He omits discussion of such a question as how a system of planned profits is designed to measure administrative efficiency

in government corporations with a minimum of attention and inspection by headquarters. He gives no account of the part played by the state arbitration system in this accounting process by allocating to a negligent government corporation loss resulting to another government corporation which has dealt with it so that accountants of the Ministry of Finance may be able to observe in the routine financial records which come before them a reflection of mismanagement. Yet Baykov is writing primarily for economists, and such omissions are probably excusable.

Students of labor relations will find the discussion of the position of labor in a planned economy valuable. England is even now faced with the problem of deciding the extent to which the workingman's freedom of contract in the classical sense can be retained under socialism. Baykov recites the measures adopted by the Soviet government since the Revolution to control labor and management. He notes that they have become progressively stricter, and he finds this necessary. He explains that in a planned system, in so far as it presupposes full employment, the economic compulsion to obey disciplinary rules and to manage an industry without irresponsibility and slackness are absent. He looks eventually for an appreciation by labor of the interests of the community and an acceptance of social labor incentives, which will make severe criminal laws unnecessary; but he appreciates that such a social change requires considerable time.

Baykov will not accept the proposition that socialism is doomed because it offers no personal incentives to creativeness. He believes that Soviet experience proves convincingly that methods for stimulating creative initiative can be devised under the planned system of industrial organization, and he describes such stimuli. He also believes that psychological obstacles to the enforcement of personal management in industry under socialism can be overcome as the principles on which the trade unions work are altered. This problem has been the rock on which Soviet industry nearly foundered and around which the British nationalized industries are still finding serious difficulties.

Some economists reviewing the book have called it a "happy hunting-ground for a fault-finding statistician," and have pointed out inconsistencies in the multitude of tables which dot the volume.[1] While this criticism may be deserved, it has not been found to extend to the laws relating to administrative matters. Baykov has found, and often translated in full, the major laws which are milestones in the development of Soviet administrative law. An exhaustive bibliography of Russian language sources is also included.

Baykov was born in Russia, educated in Prague, and given a research grant to complete his work at Birmingham University, England, in which

[1] See I. Neustadt, in *The Slavonic and East European Review*, Vol. 25 (Apr., 1947), 594–597.

he now lectures. His book has already become a handbook for those working on the economy of the U.S.S.R. It is deserving of the careful attention of others as well, if they are interested in the question of what is involved for the architect of government in any country when a socialist economy replaces the private enterprise system.

JOHN N. HAZARD.

Columbia University.

Nationalism and Internationalism. BY DON LUIGI STURZO. (New York: Roy Publishers. 1946. Pp. 308. $3.50.)

For more than half a century, Don Luigi Sturzo has been in the forefront of Liberal Catholicism as a prominent statesman and productive scholar. He has gained the respect of the Western world by his courageous stand as an active fighter for freedom before the advent of Fascism, during Mussolini's rule, and now in the aftermath of European totalitarianism. His latest book, continuing a respectable list of publications, reflects all the fine qualities of his mind. He writes with erudition and eloquence, though some of the Latin clarity seems to have been lost in the translation. Thus his book does not make easy reading. But it is rewarding in its wealth of material and its penetration into the complexities of modern state and society.

The collection of essays, brought together under a somewhat misleading title, is held together by a number of fundamental concepts. Dealing with the intellectual and political development of the last European century, the author approaches his topics with insistence on the primacy of morality over politics, with emphasis on the sociological factors in political affairs, and with an historical appraisal that takes a long-range view of world affairs.

This historical evaluation is manifest also in Don Sturzo's analysis and attempted vindication of papal policies throughout the study. While he frequently indicates his reservations against some decisions of the Holy See in respect to national and social issues, such as the attitude of Pius X toward the Roman Question, he explains these adverse decisions by stating that "certain questions cannot be treated openly before they come to maturity."

The introductory essay deals with the changing meaning of nationalism. Here, as throughout the book, the author shows a fine sense of differentiation in time and space, bringing out clearly the development toward totalitarianism. According to Sturzo, it is not a moderate nationalism, but exaggerated nationalism alone, which Catholicism rejects. Yet he insists that, "in the light of recent experiences, nationalism should not hold any other meaning" and that, together with naturalism, sociologi-

cal positivism, and rationalistic philosophy, it should be branded as "the cause of modern apostasy from Christianity."

The ensuing chapter on "The Roman Question Before and After Fascism" gives a lucid historical evaluation of this very intricate issue. At the same time, it poses fundamental problems of political Catholicism in our day. The essay, "Has Fascism Ended with Mussolini?," justifiedly stresses the significance of the totalitarian aftermath and the survival of Fascism beyond its military defeat, even within our democratic society. One might have wished that the author had elaborated his points and that he had dealt more specifically with a differentiation in totalitarianisms. He simply states: "It makes no difference if we call it Fascism or Communism; they have the same impulses, the same fundamental concepts." While a popular, present-day discussion equally identifies both predominant forms of dictatorship, it may well be the number one assignment of American political scientists to work out the distinction between the two. Only then can we recognize—friend or foe—the real challenge of Soviet Russia.

Perhaps the most interesting chapter of the book deals with the rise and development of "Christian Democracy." Reading the often forgotten Honor Roll of Liberal Catholics, one might have welcomed a more comprehensive treatment of the past contributions and of the present problems of the Christian democratic movement, in which the author has played such an outstanding part.

The remaining chapters discuss "The State, the Unions, and the Labor Parties," "The Modern Wars," "Empires and Imperialism," "Internationalism," and "The Post-War International Crisis," and reflect the balanced view of a liberal realist who, despite the setbacks of two world wars and their aftermaths, believes in the eventual emergence of a peaceful international society.

This thought-provoking book is full of the wisdom and experience of a civilized man of affairs. If there is one regret, it is that in many parts where one would have liked to learn more from the abundant knowledge of a great statesman and thinker, the author gives only a catalogue of data and mere aphorisms on the modern crisis.

SIGMUND NEUMANN.

Wesleyan University.

The European Cockpit. By WILLIAM HENRY CHAMBERLAIN. (New York: The Macmillan Company. 1947. Pp. 330. $4.00.)

In the summer of 1946, William Henry Chamberlain returned to Europe after an absence of six years. His observations and interviews in Great Britain, France, Belgium, Germany, Austria, Switzerland, and Italy strengthened his conviction of the deep-seated nature of the European

crisis, the seriousness of the Soviet threat, and the vital stake of the United States in Europe's future. "Europe," he writes, "is . . . a cockpit of contending forces, internal and external. . . . And there is a new frontier in Europe, more important than any national boundaries. It is the frontier between the Soviet sphere of military control and political domination and the rest of Europe" (pp. 3, 4).

As would be expected from this astute and seasoned journalist, the account of conditions in the countries he visited is straightforward and realistic. He found "solid ground" in England, but he does not minimize the basic problems; in particular, he stresses the inability of the British to "sustain the burdens of world-wide empire" and the implications for the United States of the "erosion of British political and economic strength." France, "still suffering from collective shell shock," is in a state of uncertain transition, intensified by political and financial confusion, an obsessive fear of a revived Germany, and a mood of "weary nihilism." He describes Italy as "stumbling in a fog toward an unknown destination," with some evidences of temporary recovery in spite of the devastating effects of inflation.

The two chapters on Germany, "the very center of the European cockpit," present a picture of almost unrelieved gloom. Mr. Chamberlain believes that the Allies, by their blunders and deliberate policies, have repeated most of the errors of the Nazis. He excoriates the mass deportations of Germans from the eastern provinces, the use of slave labor, looting on a colossal scale, the starvation dole, the currency situation, the American denazification policy, the "negative socialism" of the Potsdam Agreement, and "the petty 'master-race' affectations of the occupation." His description of present conditions in Germany lacks the vividness of the recent account of his fellow-journalist, William L. Shirer, and his lengthy rehearsal of what should be done tends to over-simplify the whole problem and to overlook some of the seemingly insuperable obstacles in the path of a satisfactory German settlement.

Mr. Chamberlain did not cross the "new frontier" in Europe, but he devotes a chapter to Poland and another to the rest of the Soviet-dominated "Lands Behind the Iron Curtain," notably Yugoslavia and Czechoslovakia. He condemns the sacrifice of Poland at Yalta, which he describes as "a complete historical parallel to Munich," with Poland as the chief victim.

Perhaps the most provocative sections of this book deal with Soviet Russia and the problem of Russo-American relations. On these subjects few Americans can speak with greater authority. The danger of war, as Mr. Chamberlain sees it, resides "in the unlimited expansionist designs of the Soviet Union." He cites specific evidence to support his contention that Russia has played a major rôle in nearly every international crisis and

that the main causes of friction between the United States and the Soviet Union are "of specifically Soviet origin." He castigates American policy toward Russia during the war, charging that it was based on false assumptions and that "we sold the principle of the Atlantic Charter . . . for a mess of unsuccessful experimentation with appeasement."

The only salvation for Europe, in Mr. Chamberlain's opinion, lies in federation. This thesis runs throughout the book; it is stated at the end of the first chapter, and repeated in almost the same words on the last page. Unfortunately, a prescription of this sort is of little value unless the prospects for its adoption, and the steps necessary to secure its acceptance, are carefully analyzed. Mr. Chamberlain owes it to his readers, who will close *The European Cockpit* with a sense of frustration, to offer such an analysis, written with all the power and realism at his command.

NORMAN D. PALMER.

University of Pennsylvania.

American-Australian Relations. BY WERNER LEVI. (Minneapolis: University of Minnesota Press. 1947. Pp. 184. $2.75.)

Australia's rôle in the war and the fact that so many American soldiers spent a period of service there is responsible for an awakened interest in the Southern commonwealth. At the same time, shifts in her economy which have strengthened ties to the United States emphasize that increasingly we will be interested in her problems. One welcomes, therefore, studies which attempt to fill the gap in a too long neglected field.

This is precisely what this book attempts to do, and while it is in no sense the definitive study, it is a real contribution. Commencing with 1784, the account of relations between the United States and Australia is carried through the period of the recent war. A final chapter on "The New Pacific" attempts to give a present-day setting; but this chapter does not seem too well integrated with the book as a whole. A criticism has been made that the study over-emphasizes the American approach. But while an Australian might interpret the data differently, and might use some other sources, it is not a fair criticism. One would welcome a companion volume from an Australian scholar. But until it appears, let us judge the present book on its own merits.

In the early chapters, the author presents a careful review of the contacts by which American traders and sailors established themselves on Australian shores. Documentation is careful and adequate. The author's sense of proportion, however, is not well maintained. More than half of the book is devoted to historical detail that could be more compressed. For instance, the space devoted to Webb's enterprises is much too detailed. Greater attention might have been given to twentieth-century developments. In dealing with the Paris Peace Conference of 1919, the

struggle of the Dominions to secure recognition of their new status is not adequately pictured. The action of the American delegation, and particularly the attitude of Secretary Lansing, was not conducive to the best relations, while Prime Minister Hughes' temperament must have been a source of friction. Again, Mr. Levi's treatment of the abrogation of the Anglo-Japanese Alliance and of discussions at the Imperial Conference of 1921 leave the reader somewhat unsatisfied. At all events, there is no clear-cut impression such as Professor Brebner supplies in his excellent article on Canada's rôle. Meighen's adamant opposition was based upon American considerations, and if Australia could not appreciate these, a fuller explanation is called for. While such criticisms point up a few shortcomings of this volume, they do not seriously detract from the book's real merit as an initial study in a neglected field.

LIONEL H. LAING.

University of Michigan.

Democracy and Empire in the Caribbean; A Contemporary Review. BY PAUL BLANSHARD. (New York: The Macmillan Company. 1947. Pp. xi, 377. $5.00.)

Though the people of the European colonies in the Caribbean are among our nearest neighbors, most of us have known little about them. Mr. Blanshard's book, which sketches briefly but vividly the political and social conditions and recent events in each of some twenty-nine communities in the West Indies and the Guianas, will be welcome to those who would like to know more.

The picture is not a bright one. Nearly everywhere its salient features are illiteracy, poverty, over-population, tropical diseases, and discontent. Few of the colonies could support their people if they did not raise money crops, like sugar and bananas, and if these were not heavily protected in the markets of the home countries. Sugar, especially, produces more dollars per acre than food crops could, and this is all-important in countries where the amount of arable land is pitifully inadequate. But sugar production involves chronic under-employment, and it probably also involves a continuance of the plantation system controlled by native or foreign capitalists, a situation with which many of the Caribbean peoples, according to Mr. Blanshard, are becoming more and more dissatisfied.

The growing resistance of the local colored population to white economic domination, and the movement for more local self-government, are the main themes of the book. Mr. Blanshard devotes much space to the state of political democracy in the area. He is especially critical of the policies of the British and Dutch governments. Until 1944, more than ninety-five per cent of the people of the British colonies were excluded from voting by property qualifications, and even after the constitutional

changes made during the war years "there is still not a British colony in the Caribbean in which all members of both houses of the legislature are elected by universal suffrage." In the Dutch colonies, the people have even less participation in the local government. The French islands, on the other hand, have a franchise sufficiently broad so that the colored element dominates local politics, with the Communists as the strongest party today.

If the people of the British colonies are obtaining more political power, this is largely a result of the growing self-assertiveness of labor. Until recently, attempts at labor organization were generally unsuccessful. The people were ignorant, there was much unemployment, and strikes were repressed by the authorities. In the 1930's, a wave of labor unrest caused serious riots in several of the British islands. These led to the emergence of native leaders who frequently became important political figures and took the lead in the demand for constitutional reforms.

Some American readers will be surprised to realize how favorably conditions in our own possessions compare with those in the rest of the area. Puerto Rico and the Virgin Islands have been given a far greater measure of self-government and have had far more financial help than any of the European colonies. In Puerto Rico, at least, standards of living are higher than they are in most other parts of the Caribbean. This does not, of course, mean that conditions in our own possessions are not deplorable, or that our policy toward them is not subject to criticism. It does suggest that our record there should be considered in the perspective of conditions in the area as a whole.

DANA G. MUNRO.

Princeton University.

Language and Area Studies in the Armed Services; Their Future Significance. By ROBERT JOHN MATTHEW. (Washington: American Council on Education. 1947. Pp. xix, 211. $2.50.)

Area Studies; With Special Reference to their Implications for Research in the Social Sciences. By ROBERT B. HALL. (New York: Social Science Research Council. 1947. Pp. v, 90. $1.00.)

These two studies analyze, in part, the same data. Dr. Hall, chairman of the Social Science Research Council's Committee on World Area Research, is concerned primarily "with the relation of the social sciences to the present status and prospective development of area studies." Dr. Matthew, for the American Council on Education's Commission on Implications of Armed Services Educational Programs, covers data pertaining to language as well as area studies and formulates "conclusions regarding the application of the programs of the armed services to civilian

education" (his "conclusions" are frequently questions). Dr. Matthew devotes more attention to language than to area studies, perhaps in part because of his professional interest therein, but also perhaps due to facts noted by Dr. Hall: "Area instruction was of necessity largely makeshift. Language, which on the whole was well taught, gradually came to be the one important aim in many institutions" conducting the A.S.T.P. and C.A.T.S. programs.

The two authors hold somewhat different concepts of area studies. Dr. Matthew regards area studies as distinct from the prewar programs of schools of international affairs and from interdepartmental majors, in that these latter do not involve "the pooling of knowledge and personnel, the integration of material into one body and under one heading, and the emphasis always placed on the contemporaneous aspect of the area rather than the past." Dr. Hall does not insist on these criteria and discounts the value of wartime innovations. "Most of the area programs which were in operation before the war seem to have suffered seriously during the war period." Most or all of the faculty involved in the prewar programs were diverted into government service and "professors of wholly unrelated subjects frequently came to carry the burden of area instruction." The features of wartime area studies stressed by Dr. Matthew appear in this view as mainly unrealized objectives.

Without belittling efforts to integrate knowledge possessed by related disciplines, persons trained in the social sciences may be pardoned for questioning the assumption made by a professor of Romance languages that the announced objectives of wartime area programs were substantially achieved. Until he has effectively "integrated" the study of French and German, for instance, social scientists may not regard him as qualified to determine the efficacy of attempts to integrate their disciplines. If the professor of language replies that integration in his field applies primarily to techniques of instruction, social scientists may reasonably ask that their disciplines be measured by the same standard.

Nevertheless, we should constantly seek practicable means for integrating knowledge that will aid in acclimating American youth for life in the areas of this turbulent but shrinking planet where they may be called to serve. Both authors agree that this purpose would be promoted by more experimentation with area studies. Dr. Hall points out: "Area studies are here. They have secured a greater or lesser foothold in most institutions of higher learning. They are distinctly of concern to government. They form a valid program of education and offer new and promising fields for research. They are as yet largely experimental and so require watching and guidance that they may develop their best potentialities." He finds that "the movement is essentially an expression of deep and fundamental dissatisfactions with American higher education and research."

Many of us feel the need "for some form of organization which will break down the isolation between disciplines." Accepting Dr. Matthews' conclusion that the wartime programs showed that "the integration of the separate academic disciplines into a common core of knowledge covering a cultural area or region, . . . is possible," further experimentation should enable us to determine whether this method provides the best means for realizing the objectives of our colleges and universities.

Such experimentation should not be indiscriminately undertaken. Dr. Hall warns against the "type, which unfortunately is too numerous to be exceptional, . . . where nothing new has been added except an additional page in the catalogue." Both authors point out that because the areas deserving of study are numerous, but adequate materials for instruction and research in many of them not yet available, and because there is an appalling shortage of qualified personnel for teaching and research, coöperation among colleges and universities to prevent waste and duplication and achieve a maximum of effectiveness is highly essential if successful results are to be obtained.

HOWARD WHITE.

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BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

How Should Corporations Be Taxed? (Tax Institute, Inc., 1947, pp. xii, 251, $4.00) presents the divergent views of nineteen distinguished business executives, labor leaders, tax attorneys, and tax experts—all participants in a symposium held in New York last December on what should be done about corporation taxes. Discussions of the general topic are grouped and appear in the following order: "Proposals for Reforming Corporate Income Taxes"; "Should Small Corporations Receive Tax Advantages?"; "Detailed Aspects of Corporate Income Taxation"; "Tax Provisions Which Affect International Trade"; "Does the Present Tax System Discourage Business Enterprise?"; and "Should the Taxing Power Be Employed to Regulate the Economy?" Within the brief space of a review, it is impossible to appraise fairly the varied contents of a volume of this character. It serves a useful purpose in introducing one to points of view and issues involved in corporation taxation. As might be expected, one discovers sharp disagreement between labor representatives and the representatives of corporate managements as to what should be done about the taxing of corporations. Where there are cleavages on basic economic philosophy, individual contributors tend to generate more heat than light on the subject assigned. In the opinion of the reviewer, the most worth-while selections are those which see both the good and

the bad in corporation taxes, and which, without eliminating them entirely, seek to modify them in such ways as to produce a better integrated and more consistent tax system than prevails at present. Although the symposium hardly attains the "consensus" hoped for by Dr. James W. Martin in his foreword to the volume, individual contributors supply valuable and suggestive viewpoints on both the broad issues and the significant technical details which corporation taxes involve.—MARTIN L. FAUST.

A recent publication of the Research Committee of the American Political Science Association is O. Douglas Weeks' *Research in the American State Legislative Process* (American Political Science Association, 1947, pp. vii, $0.50). The preparation of the monograph was undertaken at the invitation of the Committee on Public Administration of the Social Science Research Council, and its publication was financed by the Council. The investigation is comprehensive in scope, encompassing the entire field of legislation at the state level. Of necessity, in a study so brief, the author was under constraint to select and emphasize rather than to treat exhaustively the many aspects of state legislation. His point of focus is to analyze the various segments of the field, call attention by way of illustration to some of the research which has been done, and point out the most fruitful areas for future research endeavor. Some of these suggested areas of research are traditional and uninspiring, such as direct legislation, unicameralism, and legislative sessions. Such intriguing topics as legislative personnel and legislative leadership of the governor, on the other hand, offer stimulating new possibilities for investigation. Professor Weeks has done a creditable piece of work. Those who direct state-government research, both in graduate schools and in research bureaus, can ill afford to be without his study.—JOSEPH M. RAY.

In *American Tariff Policies Toward the Philippines, 1898–1946* (King's Crown Press, 1947, pp. viii, 233, $2.75 cloth bound), Senor Pedro E. Abelarde seems to find himself torn between, on the one hand, pent up emotions which no doubt grow out of interest for his country in its struggles for maturity and the proving of its qualities for nationhood, and, on the other hand, scholarly ideals and qualities. He, nevertheless, remains always the scholar and student in analyzing the factors in the trade relations of a colony once set free from a parent state with one kind of political economy, and the adaptations that it must make in the establishment of political relations with another state with quite different economy and political outlook. From treaty of annexation to the establishment of the Commonwealth in 1935 was a transitional period in the gradual building of a tariff policy showing little interest in the economic

development of the Philippines to one in which certain pressure groups in America intensified their interest and dominated in the development of the industries of the Islands. Under the Treaty of Paris, 1898, providing for a period of ten years during which Spanish ships and merchandise entering the Islands should be admitted on equal terms with ships and merchandise from the United States, not only did other European nations, by indirect shipping practices, effect a weakening in the economy of the Philippines and deplete their treasury, but similar results came from the favorable trade provisions for the United States. At the beginning of our suzerainty over the Islands, a military board of officers appointed for the purpose made recommendations considerate of the Philippine economy, the treasury, and the standard of living of the people. Though these ideals were never attained, the recommendations served as a guide to our Congress. After the expiration of the ten-year period of the treaty of Paris, the "open door" tariff arrangement was slammed shut and American goods went on the free list. Philippine goods, with some exceptions, had free entry into the United States. The effect of this policy was to give an artificial stimulus to Philippine-American trade which became difficult to sever without disruption to the Islands' economy. Tariff provisions during the Commonwealth period did not prepare the Islands for their coming independence and future national economy. This book has plenteous notes, references, tables, and charts, as well as a classified bibliography.—H. C. Cook.

In our type of economy, the disposition of surplus commodities can raise serious problems. Joseph D. Coppock's *The Food Stamp Plan; Moving Surplus Commodities with Special Purpose Money* (Transactions of the American Philosophical Society, Philadelphia, May, 1947, New Series, Vol. 37, Part 2, pp. 200, $1.50) delineates one tested solution. The food stamp exemplified an expansion type of "special purpose money" (special purpose money is that which can be spent only in accordance with certain rules) in contrast with contraction special purpose (ration) money. The U. S. Department of Agriculture operated the Food Stamp Plan from 1939 to 1943 for the dual purpose of raising cash incomes of food producers and providing the needy with food. Viewed from this relatively limited objective, the program was successful. It brought more food to the poor than a straight cash subsidy would have, and food-sellers had larger revenues. Obviously, it was no major redistributor of income, nor could it be considered a remedy for the business cycle or the general malfunctioning of the system. None the less, when and if reintroduced, it could be even more effective. Coppock urges an unequivocal statement of aims, simplification and standardization of administration, and improved reporting. Of course, special purpose money was only one of several ways

in which the surplus commodity problem could have been attacked. But, as Lewis Mumford counseled in *Faith for Living:* "The food stamp disposal of agricultural surpluses to families on the W.P.A. rolls is a crude indication of a method that has far wider application in a rational society. Never again must we burn, destroy, or withold that for which we have need." Even more basic is the author's conclusion that "an economic system which stands only with the support of stamp plans and other such props is not a permanently satisfactory system." Coppock's is a scholarly, balanced volume with utility for political scientist and economist alike. In addition to the exhaustive analysis of the food-stamp program, broader ramifications of special purpose money are expounded. Probably the discussion (and it is considerable) of policy and administration will have greater appeal for the reader of this journal than the wealth of technical and statistical material.—RITA DAVIDSON.

The fourteenth edition of the *Municipal Year Book* (Chicago: International City Managers' Association, 1947, pp. 550. $8.50), edited by Clarence E. Ridley and Orin F. Nolting, came off the press late in June. As in past years, it provides municipal officials with discussions of the current problems of cities throughout the country, with facts and statistics on individual city activities, and with analyses of trends by population groups. The new sections in this edition reflect the changing emphasis in municipal activities. Detailed information on the management and financing of municipal hospitals and airports indicate the current interest in expanding fields. Other sections present new data on fire-prevention inspection of dwellings and on the extent and methods of police patrol of residential areas. Another section presents an analysis of the methods used by cities in charging areas outside the city for water and sewerage service. Perhaps of most interest to municipal officials are data in the personnel, finance, and planning sections of the book. One table gives pay rates for fourteen selected municipal positions in ninety cities, while another table shows salaries of chief municipal officials by population groups, with an analysis of trends over a period of years. This section also contains information on city employee organizations and the extent of employee strikes last year. The revenue section summarizes data reported by more than 1,600 cities on non-property tax revenues and service charges, and the planning section shows types of improvements that subdivision developers are required to install before plats are approved. Most of the regular features of the *Year Book* have been retained and brought up to date, including the sections on municipal reports, typical utility bills, parking lots and parking meters, assessed valuations and tax rates, court decisions affecting cities, debt trends, directories of officials, and model municipal ordinances.—C.E.R.

Sanford Winston's *Leadership in War and Peace* (North Carolina State College, 1946, pp. 152) is a study of the theory and operation of the "neighborhood leadership system" developed and used by the Agricultural Extension Service in rural North Carolina. The study, based largely on an intensive survey in six counties, with General Education Board funds, contains four major parts: organization and programs; characteristics of leaders; comparison of leaders and their groups; and the leaders on the job. Dismissing the township as an "artificial" division ill-suited for a rôle in the agricultural planning process, Winston points to the "need for a more natural basis for localized planning and action" and asserts that the "neighborhood is obviously the unit to work with and through." A basic problem, then, is "the mapping of neighborhoods and the seeking of the leadership that exists in these neighborhoods." During a two-year period, the entire state was divided into 6,013 rural neighborhoods on the basis of white population, and later 1,265 Negro neighborhoods were delineated. Several leaders (ordinarily one for every ten families) were chosen in each neighborhood, women usually equalling men in number. About half were elected by the neighborhood people themselves, and most of the remainder were selected in a process of consultation between the county agent and persons in the neighborhood, only a few being appointed directly by agents. Getting into operation in 1942, the resulting network "provided a way literally to reach the last family on the last row." In Anson county in 1942–43, for example, the grass-roots leaders "presented" seventeen "programs" to their neighbors; among these projects were scrap iron and rubber collections, victory gardens, civilian defense, war bonds, auto transportation pools, rationing, production goals, and a turkey coöperative. This sort of development, not confined to North Carolina, indicates movement toward institutionalizing relations between county agent and local leader and toward the goal of "reaching" substantially all farm families. It remains to be seen, however, whether the particular pattern will prove readily adaptable for meeting broader needs for adult education in social economy, and for more effective local contribution to and understanding of state and national policy decisions and for *rural-urban* regional planning.—FRED A. CLARENBACH.

War-time shifts in population to metropolitan centers and the acute situation in urban housing have forced police departments to seek aid and advice in formulating plans and programs to anticipate the seemingly inevitable clash between minorities and the so-called majority. Joseph D. Lohman's *The Police and Minority Groups* (Chicago Park District, 1947, pp. xiii, 133, no price given) was prepared under the authority and direction of the Chicago Park Commissioners as part of a training program for Park District police. This brochure is a thoroughgoing analysis of the

types of situations giving rise to friction which may blaze forth into dangerous riots between minorities, especially colored, and other groups. The rôle of the police is clearly set forth in language which stresses the sound fact that the police officer must not identify himself with either group during such disturbances and must not let his own prejudice or preference determine his course of action, but must guide himself by sound impartial judgment for preventing and quelling such disturbances. The nature of prejudice, the rights of individuals, the development of tension, the rôle of rumor, the location of possible areas of disorders, the influence of segregation both economic and residential, our knowledge of race and its relation to ability, to crime, and most important of all "the rôle of the police officer in dealing with tensions," are some of the aspects of the problem ably analyzed. Every police officer who "knows" the causes and who "knows" the solution should be required to memorize the author's analysis of what underlies racial conflicts. There are thirteen excellent spot maps of Chicago pertinent to this study, two appendices dealing with Illinois statutes, the Chicago municipal code, and a selected bibliography of books, pamphlets, and films.—J. P. SHALLOO.

In his *Niles' Weekly Register* (Louisiana State University Press, 1947, pp. viii, 337, $5.00), Professor Norval Neil Luxon gives a good story of the founding, development, and termination of the most important and, unique repository of political intelligence in America for the period 1811–49. That journal, which was started at Baltimore in September, 1811, became unique for its unbiased coverage of political activities, issues, and controversies, in spite of the strong and strongly biased editorials and articles of Hezekiah Niles, the founder and for many years the editor. The present study is primarily concerned with approaching the subject from the angle of journalism rather than of political science or political history as such, and the first four chapters deal with the *Register* as a "News Magazine of the Nineteenth Century," with the editors, and with the articles and editorials. Then follows an account of the journal's treatment of such issues as the tariff, the United States Bank, Anglo-American relations, Latin America, internal improvements, and slavery, as well as national elections. The last regular chapter is entitled "The *Register* and the Historian." As a revised doctoral dissertation, the work of Professor Luxon comes to an end with a good critical essay on authorities. The book is well written and not strikingly suggestive of the typical dissertation as understood by the cynic. It is a good account of "an honest chronicler," which this reviewer would like to make required reading for certain of our American journalists and publishers today.—H. C. NIXON.

FOREIGN AND COMPARATIVE GOVERNMENT

W. L. White has presented not only a vivid and arresting *Report on*

the Germans (Harcourt, Brace and Co., 1947, pp. 260, $3.00), but also a report on opinion in the United States during the war years. It is these references to the United States and at times to the U.S.S.R. that drive his points home. The Russians come off rather creditably so far as they enter into the book. White confines himself almost entirely to Berlin and makes no pretense of giving a factual survey of conditions in all Germany. He is interested in finding out what the people thought under Hitler and what they are thinking now. The book has really three parts. The author's description of Berlin when he went there as a reporter in 1939 furnishes the background for his postwar reconnaissance. Knowing he could never get all Germans to speak freely, he hired some reliable German reporters to make inquiries for him. These miniature case histories are then presented in the form of conversations with different characters. A former German student in America who made daily newspaper abstracts for Hitler during the war, Jews who survived the Hitler terror, German newspaper reporters, and others from all walks of life tell their story. White tried to discover how many Germans knew about the extermination camps and became convinced that most of them did not. Even if they heard rumors of the camps, these were not believed because they seemed so incredible. Many thought this was only a repetition of the Allied atrocity stories of the First World War. The real terror against the Jews started in 1943, partly because many small Nazi leaders wanted to report that their territories were free of Jews. The conclusion is reached that most Germans knew the war was lost long before 1945, that there was much opposition to Hitler, and that our unconditional surrender policy was a big mistake. White contrasts this policy with the way in which Wilson handled his Fourteen Point program in 1918. This, in fact, constitutes the third section of the book, which sets the making of the 1919 peace over against present efforts. The greater idealism and desire for a democratic and just peace at that time as compared to the present is underlined. In this section, a few historical inaccuracies have crept in. The Dodecanese Islands had been in *de facto* possession of Italy since the Tripolitan War; it is hardly a true picture to state that "the task of bringing German war criminals to trial was finally left by the Treaty [of Versailles] to the Germans themselves," although that was the end result; and the brilliant description of the Hall of Mirrors would have been appropriate to the signing of the Treaty of Versailles, but not for the presentation of peace terms on May 7, 1919, which took place in the Trianon Palace Hotel. On the whole, the author's interpretation of the Germans, his sources, and his conclusions, stand up well under critical examination.—E. C. HELMREICH.

In his account of the top staff planning of the Nazis, *Design for Aggression* (Harper and Brothers, 1946, pp. 270, $3.50), Peter de Mendelssohn

has surveyed the Nazis' planning for five of their major problems. Each is dealt with as a sort of case study, neatly and compactly analyzed on the basis of the documents that were published at Nuremberg. Quotations are ample and illuminating, and the sense of history in the planning is admirable. The cases include the preparations for war on the Eastern borders of the Reich, the plans for invasion of Britain, the attack on Russia, and the relations with Spain and Italy. The world's new and present troubles are proving sufficient to make us forget its recent ones before we have taken the trouble to learn half of the lessons they might teach us. This makes it the more necessary that some of the more interesting materials from the past war be raked over and presented with simplicity and clarity by the few who understand how to present them to the many who should understand them. In this respect, the book, though unpretentious, is a very valuable one. The style may seem strained or exotic to those unfamiliar with the manner of expression of such agencies as the Joint Chiefs of Staff. To those inoculated, it will be restful and extremely lucid. Although one purpose of the book is to show the malice aforethought with which the Nazis approached the war, at least one by-product impression is the similarity of high-class staff work at the top of their government to that in any other government, both in its faults of conception and in its virtues of execution. There are points in the book where the author shows a lack of familiarity with comparable data on other countries than Germany, or a lack of imagination in making comparisons. He clings to the simple myth that the Nazi war effort was on an all-out basis in the early phase of, or even before, the war, though the Strategic Bombing Survey studies show how false this legend was. He criticizes the Nazis for self-delusion without even a nod at the degree of the same fault present elsewhere. He leaves the reader with no explanation even offered for the remarkable mixture of intelligence and nonsense that Hitler exhibited, though he calls attention to both. And he occasionally fails to add to his documentation from sources long familiar, such as public speeches by Hitler, even where these would help to fill out the narrative and the explanation.—GEORGE S. PETTEE.

INTERNATIONAL LAW AND RELATIONS

The second edition of *Foundations of Modern World Society* (Stanford University Press, 1947, pp. xiii, 928. $5.00), by Linden A. Mander, gives teachers and others interested in the details of international relations a book which is usable for students as well as unusual—and sound—in its approach. In other words, the volume is more than a "textbook"; it has interpretation of fundamentals, logical arrival at conclusions, and originality (though not as much as the first edition of 1941) as to order of

topics. Adverse criticisms are: (1) some chapters are too long (e.g., XVI, "International Law and Organization," is a short volume in itself); (2) immense detail regarding certain points, especially international administrative tasks, makes for a doctoral dissertation impression (at these places). On the whole, however, the book is a substantial contribution. In the original edition, Professor Mander began with health as an international problem, continued with crime, and then with various economic concerns of mankind, developing a logical arrival at world political organization and the question of security. The purpose of this order of topics was to indicate that the foundation of international problems is human problems. The factual material as well as the method of presentation—over-all and within chapters—emphasized the interdependence of states and peoples in their quest for service and security. International government—political organization with genuine authority—not merely nation-states—must inevitably be their (the peoples') instrument. This glance at the first edition is taken not only because the central ideas of the 1947 revision remain the same, but because, in this reviewer's opinion, the original book was more logical and effective, given this theme. In the present work, the chapters on "The Development of War and Its Effect upon the Sovereign State," "Security: the Problem and Attempted Solution," and "Regional International Organization" are placed at the beginning. The second edition concludes, however, with "International Law and Organization," and it contains a wise choice of new material as well as necessary rearrangements within chapters. For those who wish a full panorama of the dynamics of international relations, this book will be considered a valuable complementary balance to the several excellent works emphasizing power and power politics.—J. WILLIAM ROBINSON.

Immunities and Privileges of International Officials (Carnegie Endowment for International Peace, 1947, pp. xiv, 281, $2.50), by Martin Hill, is an intensive treatment of a relatively small but increasingly important matter in the field of international organization. Most of the volume is devoted to the experiences of the League of Nations, the Permanent Court of International Justice, and the International Labor Office, regarding diplomatic privileges and immunities, with the governments of the countries in which they were located. The basis for the policy of the League of Nations was to be found in Article 7 of the League Covenant, which reads in part as follows: "Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities." It was recognized in the creation of the League of Nations, and more so now as a result of the League's experiences and the growth of the field of international relations and organization, that if officials connected with international agencies

are to be able to function most efficiently and effectively, they must enjoy a high degree of diplomatic privilege and immunity in all countries, and particularly in those states where they are permanently located. The international position of such officials is even more important than that of ordinary diplomatic agents who act upon a national basis. Two principal questions involved as to officials of international agencies are (1) what levels of officers and employees shall be accorded diplomatic privileges and immunities, and (2) to what extent should governments go in granting these privileges and immunities to international agents? For the most part, Switzerland, Holland, and Canada have been quite liberal in their policy toward employees of international organizations located within their boundaries. With the creation of the United Nations and a host of less important international agencies, the problem of diplomatic privileges and immunities becomes even more important and interesting. This book provides us with an excellent background for study of the matter as it develops in the future.—CARL M. FRASURE.

Apparently, in retrospect, the controversy between "sea power" and "air-power" advocates in the inter-war period was in considerable part one of semantics. According to Captain W. D. Puleston, U.S.N. (Retired), in his *The Influence of Sea Power in World War II* (Yale University Press, 1947, pp. x, 310, $5.00), "partly because Mahan did not define 'sea-power' concisely, that term has often been used in the limited meaning of 'naval power' " (p. 15). For Puleston, a biographer of Captain Mahan, the term "sea-power" relates to "gaining and maintaining control of the sea and thereby dominating the land," whether the instruments of control are surface-, sub-surface-, or air-ships. "Sea-power was the decisive factor in the first World War" (p. 12), and in the second. In the Pacific, sea-power, with its triphibious operations, had reduced the Japanese to a position in which the atomic bomb and Russian intervention merely hastened their decision to surrender unconditionally (p. 289). Puleston happily is not dogmatic: he gives adequate weight to other factors influencing the course of events in the last World War. In his preface, he says: "This is not a narrative history of the war, not a critique of its naval operations. This work is primarily concerned with the objectives of the political leaders who headed the Axis and anti-Axis nations, and with the strategies used by their admirals, generals, and air marshals to attain these objectives by the use of land, sea, and air forces. The book endeavors to show the consequences of sea and land campaigns rather than the tactics of battles; . . . " Although some general narrative might be regarded as necessary to the achievement of these purposes, Captain Puleston has given us primarily a detailed narrative of the use of sea-power in World War II. Furthermore, there is no extensive examination and discussion

of strategy, except for some of the grand phases; and there is considerable description of tactics. Perhaps experts in naval history will quarrel with Captain Puleston on other grounds. Wherever possible, the data used have been obtained from official sources, including evidence gathered from personnel of the defeated powers. This authenticity and the wealth of detail set forth should commend the book to historians. In the concluding chapter on "New Weapons and World Relations," the author explores some of the implications of the use of nuclear energy. Changes in types of instruments of control, construction, strategy, and tactics will undoubtedly have to be made, but "not until the oceans cease to be the highways of the world will sea power lose its influence" (p. 300).—HENRY REIFF.

Dorothy Borg's *American Policy and the Chinese Revolution, 1925–1928* (American Institute of Pacific Relations and the Macmillan Co., 1947, pp. x, 440, $5.00) is one of those rarities among doctoral dissertations, a piece of sound scholarly writing which can be read with enjoyment by the non-specialist. Through three and a half years—from the spring of 1925 to the fall of 1928—it traces the course of American policy in the face of a rising storm of Chinese nationalism. The Shanghai Incident of May 30, 1925; the Special Tariff Conference which assembled at Peking in the fall of 1925, and the Commission on Extraterritoriality which began its sessions in January, 1926; the northward advance of the Kuomintang forces into the Yangtze valley; the Nanking incident of March 24, 1927; the eventual overthrow of the Peking government and the establishment of the Kuomintang régime at Nanking—these and other developments each brought to the American government its corresponding problem of policy. The developments, the policy problems, the pressures of American public opinion and the counter-pressures exerted at Washington or in Peking by the other "treaty powers," comprise the warp and woof of Dr. Borg's neatly woven fabric. In her account—which is based upon State Department documents, unofficial publications, and personal consultation with some of the leading participants—Secretary Kellogg stands out as consistently opposed to any American interference in China's internal affairs. Although Mr. Kellogg was bitterly criticized by American business interests in China and was under constant pressure by our minister to that country, who favored coöperation with the other treaty powers, his policy was overwhelmingly supported at home, both in and out of Congress. The Kellogg policy, as Dr. Borg points out, constituted a retreat from the Washington Conference formula; but it effectively discouraged any international action for the forceful maintenance of the outworn treaty régime, and thereby facilitated the unification of China by the Kuomintang.— G. NYE STEIGER.

The Future of Freedom in the Orient (Norton and Co., 1947, pp. 233, $3.00) is superior to many of the books written about southern Asia and China by foreign correspondents. Ralph Coniston is a careful observer of the contemporary situation, and many of his appraisals are shrewd and accurate. Apparently, however, he knows very little about the events that preceded his arrival in India and Southeast Asia. He ascribes the inadequacy of education and the social services to the indifference or deliberate policy of the colonial powers, whereas the primary cause was the inadequacy of revenue. India, for instance, had to provide services for about three times the population of the United States with about half the income of New York City. The author is very skeptical as to whether independence will improve the political or economic position of the common man. He brings forward strong reasons for his belief that a foreign bureaucracy will be replaced by an oligarchy of the Western-educated minority. He doubts whether the new rulers will be more willing to work for genuine democracy than the present Kuomintang dictatorship in China. He does not believe that industrialization will do much to improve the standard of living of the masses. Mr. Coniston does not see how it can be financed except by heavy American loans, and he suspects that it will inure to the benefit of the wealthy and influential manufacturers. The author also foresees the likelihood that independence will be followed by civil wars. In India, at least, he has proved a true prophet. The book is a useful corrective to the belief that independence will solve the problems of the colonial peoples.—LENNOX A. MILLS.

"Progress and Prospects of the United Nations" is the subject of the July, 1947, issue of *The Annals of the American Academy of Political and Social Science* (Vol. 252, pp. 183, $2.00). Edited by Ernest Minor Patterson, the volume contains the papers presented at the annual meeting of the Academy. Six of the contributors base their conclusions on direct participation in the operations of the infant international organization, while the other nine have observed the experiment from the outside. Thanks to their combined efforts, the reader may obtain a reasonably satisfactory though not complete assessment of the results achieved and of the hopes of future years. United Nations officials cover such topics as the international monetary fund; aid for the world's children; America's untiring efforts to establish peace; forces influencing the movement of the new international ship of state; a comparison with the League of Nations, especially in regard to disarmanemt and security; and an evaluation of the Security Council. James Burnham and George Soule give two different interpretations of the purposes and achievements of the United Nations: one concludes that the United Nations as now constituted "neither

is, nor can lead to, a workable world order," while the other contends that under the patient, persistent leadership of the United States the United Nations will continue to enlist the support of all peoples "who want peace and ordered liberty." Robert H. Hadow gives assurance that in spite of ideological differences, "the foundations are being well and truly laid" by all the nations that aspire to democracy. Morris S. Rosenthal describes the rôle of the United States in world trade; while Raymond F. Mikesell considers trade practices under the proposed I.T.O. charter; Taraknath Das emphasizes developments in the sphere of human rights; Helen Gahagan Douglas gives her impressions of the United Nations; Clark M. Eichelberger points out the ways in which the United Nations Charter has been evolving under pressure of events; and Wellington Koo states the basic problems confronting the United Nations. The general impression gained by the reader of these fifteen appraisals is one of realism rather than one of optimism or pessimism. After a year and a half of the trial-and-error method in the field of organized international coöperation, students of the United Nations may not reasonably expect more than slow progress and fair prospects.—J. VAN DER ZEE.

One of the most significant achievements of the League of Nations was the establishment of international controls over the trade in dangerous drugs. Beginning with the Hague Convention of 1912 as a base, the League, through its Advisory Committee on Traffic in Opium and Other Dangerous Drugs and the Drug Control Service of the Secretariat, developed what amounts to a planned economy in the narcotic field. How this planned production and planned distribution of dangerous drugs operated under supervision of international bodies is described fully by Bertil A. Renborg in *International Drug Control* (Carnegie Endowment for International Peace, pp. xi, 275, $2.50). As a chief of section in the Drug Control Service of the Secretariat, Renborg had full opportunity to observe the growth of the League-sponsored supervisory bodies, the problems that were encountered, the results achieved, and the gaps in the regulatory structure that remain unfilled. The book begins with a concise analysis of the international conventions forming the legal basis of control and proceeds to a description of the agencies that administer the program, their jurisdiction, and their interrelationships. There follows a discussion of the problems confronted and the administrative devices used to effectuate control. Concluding chapters give an appraisal of results and the outlook for the future under United Nation's supervision. An appendix lists the signatories to the several conventions and includes several key forms used by the control agencies. This is a valuable record of effective international administration, and it raises provocative questions

in the reader's mind regarding the applicability of the techniques of control developed empirically in the drug field to other areas where international regulation is indicated.—WILLIAM J. RONAN.

Tom Galt's *How the United Nations Works* (Thomas Y. Crowell Co., 1947, pp. vi, 218) is designed for children in the upper grades. Its language and drawings are on their level; its homey analogies and simple explanations are appropriate. The book presents elementary ideas of international law and of the organization and functions of each major UN agency. Galt's frequent use of the word nation (or a country's name) for state, government, interest groups, or individual officials is unfortunate. The book's attractive drawings often employ the very ethnocentrism which Galt denounces. A less moralizing, more realistic style would be more effective. While the U.S.-Russian struggle imperils the existence of the UN, Galt pleasantly explains that nations will dutifully obey the International Court of Justice; and to this he adds the dictum that "if the nations sign more interesting treaties, the Court will have more interesting cases" (p. 85).—GARLAND DOWNUM.

In a pamphlet, *Non-Self-Governing Territories* (United Nations Publications, Lake Success, New York, 1947, pp. 152), the Secretary-General of the United Nations has published five summaries of information on fifty-four colonies transmitted to him by the governments of Australia (1), France (16), New Zealand (1), the United Kingdom (29), and the United States (7) during 1946. Under Chapter XI of the Charter, members of the United Nations which have already assumed responsibility for the administration of territories whose people have not yet attained a full measure of self-government undertake "to transmit regularly to the Secretary-General for information purposes" a wide range of information. Here, for the first time in history states agree to forward reports upon what heretofore were considered matters of national concern only. Reports from Belgium and the Netherlands have not yet been published, and Portugal and Spain as non-members are not obligated to report upon their colonies.—W. LEON GODSHALL.

POLITICAL THEORY AND MISCELLANEOUS

Foundations of Democracy (Harper and Brothers, 1947, pp. 266, $2.00), edited by F. Ernest Johnson, is a collection of lectures delivered at the Institute for Religious and Social Studies. As is often the case in a series of lectures by different individuals about a common topic, this series lacks integration and fails to give a consistent, well-rounded, fruitful analysis of the topic under discussion. The first lecture, by the editor, raises a number of important questions about democratic government.

What he says, however, has about as little to do with what follows as the chaplain's prayer at the opening of a national nominating convention. Though the topic under discussion is democracy (surely a form of government, if anything, and therefore the special province of the political scientist), there is not a single political scientist among the lecturers. This is not to deny that others may be competent to deal with politics, but it does raise a question as to what could have been the basis for choosing the participants. This question bears all the more weight when it is noted that the lecturers have little to say about the real problems of democracy as a system of government. Lectures II through VII possess a certain amount of unity in that they deal with the sources of democracy: classical, Hebrew, medieval, reformation, humanistic, literary, and the Founding Fathers. But, because the lectures offer no common definition of the "democracy" whose sources are being discussed, they lose much of their collective value. Some of the material presented is interesting, e.g., "Classical Sources" by Irwin Edman, "Medieval Sources" by George N. Shuster, "Humanistic Sources" by Horace M. Kallen. But it contributes little to an understanding of present-day democracy. The remaining lectures present no coherent pattern at all. There are lectures on "Democracy and Economic Liberalism," "The Rôle of Economic Groups," "Democracy in a Collectivist Age," "Education for Freedom," "Democracy in Educational Practice," "Democratic Conceptions of Authority," "Revelation and Prophecy," "Democracy and Ethical Realism," "Organized Religion and the Practice of Democracy," and "Democracy and Zionism." Here, too, there is no common conception of the meaning of democracy (surely many of the lecturers would repudiate George Houston's attempt in "Democracy and Economic Liberalism," Lecture IX, to dissociate democracy from majority rule and to associate it with a particular kind of economic system). There is no common problem discussed by the various lecturers; there is little or no attempt to integrate and coordinate the subject-matter; much of the discussion is not about democracy at all—that is, democracy as a system of organizing political power. At the conclusion, the reader, though more learned, will be little wiser. Some of the lecturers have interesting things to say. Some of them have valuable things to say. But a political scientist must conclude that as a series of lectures about democracy, they present an excellent example of saying much that is worth little about a topic of great importance.—E. M. KIRKPATRICK.

Publication of *Freedom and Reform; Essays in Economic and Social Philosophy* (Harper's, 1947, pp. vii, 409, $3.50), by Frank H. Knight, was initiated by some of Professor Knight's students and colleagues who felt that assembling the papers in a single volume would greatly enhance their

usefulness. Although the papers range over the entire field of the social sciences and deal also with the problem of the relation of natural science to the social studies, the book has essential unity, as indicated in its title. "Freedom," says Professor Knight, " is a mystery which . . . has been discussed by philosophers and theologians throughout the ages." Common to their discussion, however, he finds a confusion between freedom and power which has led them to unwarranted conclusions. To him, freedom is not something detached and abstract, but "freedom to use power, of which the individual may possess much or little or none at all and be equally free." With regard to this central problem, as to many others, the author cuts cleanly as with a sharp scalpel through *clichés* and stereotypes and confusions of thought. Space permits only the following brilliantly devastating examples. Of the Utilitarians, he writes: "If pleasure is defined as identical with motivation in general, there can be no motive but pleasure—and if it is defined in any other way, there will necessarily be other motives"; and of Marxist dialectic materialism, " . . . the position reduces all discussion to nonsense, all utterance to noise or physical configuration of some sort. The statements of the propagandist himself are also social and historical phenomena. And to assert that they are merely the physical effects of physical causes amounts to saying that one is not saying anything, a self-contradiction which seems to surpass any other conceivable example of the species self-contradiction in self-contradictories." Professor Knight finds in socialism much less that is essentially different from free enterprise than is currently believed. "The problem of socialism (also) . . . is purely one of degree with respect to every detail in the complex of changes proposed." He considers absurd the attempted distinction between personal capacity and property in the narrow sense in relation to socialization. He himself believes that socialistic government will tend always to become authoritarian, and that the "program of socialism seems to consist primarily in transferring from business to politics the whole competitive struggle for power." The real problem here, he holds, is that of what government will do, which in turn depends on the sort of persons in government office. He finds men—and women—in government still only human beings with human motives and weaknesses, and thinks that there is no especial reason for hoping for superhuman results. The problem then is one of education in the larger sense, and primarily for the citizenry: " . . . the ultimate task of society . . . and of government . . . is to create such individuals . . . that agreements on right ideals will be possible, and will be achieved, by non-political processes." In his treatment of a moderately socialized democracy, to which the author pins his faith, all of the distinctive characteristics of democracy as principle and procedure receive attention. For the reviewer, however, greater charity and cogency would have been achieved by a more methodi-

cal discussion of the rational and moral nature of man, in which it is believed that the essence of democracy exists, and of the deductions to be made from that basic fact, and the procedures that flow from it. The *credo* of the book is well summarized in the final paragraph: "The alternative to dictatorship is simply democracy in general as we have known it, struggling to solve its problems, along lines already familiar. It means coöperation in thinking and acting to promote progress, moral, intellectual, and esthetic, with material and technical progress as the basis of all, and all under the limitation of gradualism and 'seasoned' with humor and play. The combination is the meaning of liberalism."—ELLEN DEBORAH ELLIS.

Les Doctrines Politiques Modernes (Brentano's, 1947, pp. 322, $2.50) is a series of twelve studies, by as many authors, arising from discussions organized at *l'École Libre des Hautes Études de New York*, and introduced in this volume by B. Mirkine-Guetzévitch. No unity is intended in the series, no single doctrine presented. A group of specialists contribute from their several angles. The studies, arranged in three sections, refer in the first part to the *objet*. First, Jean Gottmann reviews succinctly and with comprehensive perspective the rise and the pretensions of geopolitics, emphasizing the French contribution to the study of geographical factors in politics more than in the relevant discussions in English. Gottmann concludes, as against the materialism of the extremer doctrines, some of them American (Spykman), that there is some reason to speak now again of wars of religion. Claude Levi-Strauss, in a study translated from English, presents a theory of power as reflected in a primitive society, that of the Nambikara in Brazil, suggesting that it is not a question of who is the best tribal chief . . . "le chef n'est pas interchangeable . . . le chef préexiste." Next, Mendizabal, jurist, presents an elementary review of the idea of the rights of man, the most refreshing part of which, to the reviewer, is the account of its very early history in medieval Spain. Alfred Stern's "Mythology and Positivism in the Conception of the State" identifies metaphysical conceptions in general with tendencies toward the sway of the "myth," while positivism is seen as fruition of the rational and the critical judgment. Of a different caste is the discourse on *Le Droit d'Insurrection* by Louis Marlio. Science has made difficult the protection of this right. The second part of the book treats of individual thinkers and individual political systems: Mirabeau by René de Messirèes, De Rivarol by Alphonse Roche, De Bonald by Alexandre Koyre, Maurras by Auguste Viatte. The study of "Kant and the French Revolution" by P. Schrecker throws new light upon the kinship of Kant with the French Revolution and in point of depth is perhaps the most rewarding of the entire series. Also the study of Bonald, the *true* "inspirer of the anti-demo-

cratic thought of the last century," is significant of original scholarship. Of the two contributions in the third part, the discussion of German National Socialism by Ernest Hamburger covers well-worn ground in a popular way, and surely exaggerates here and there, as upon the German natural bent for authority. The final article, by Mirkine-Guetzévitch himself, on "The Republican Tradition in the Political Thought of the Resistance," while something is added, seems briefly and hastily put together, perhaps to lend a degree of appropriateness to the concluding section. This is not the well known jurist at his very high best.—WALTER SANDELIUS.

Max Weber: The Theory of Social and Economic Organization (Oxford University Press, 1947, pp. 436, $6.00), by Talcott Parsons, represents a translation of Part I of Weber's *Wirtschaft und Gesellschaft.* Although this was in turn originally published as Volume III of a still larger collaborative work, *Grundriss der Socialoekonomik*, in the planning of which Weber played a major rôle, the material has not heretofore appeared in English. The translation of the first two chapters is that of Mr. A. M. Henderson as revised and edited by Professor Parsons, and the translation of the last two chapters is the work of Parsons alone. Professor Parsons has also written an introduction of approximately eight-five pages which is both a summary and a critique of Weber's work. It is, of course, impossible even to outline the work of a "systematic" German thinker like Weber in space so short as this. Suffice it to say that what the present work represents is basically a sociological approach to economics. Weber himself states emphatically that what he is about to present is not in any sense "economic theory." Rather he is concerned with the social, or perhaps it would be better to say institutional, structure of economic activity, to which traditional economic theory has always accorded a more or less *a priori* acceptance. But Weber's entire treatment of economics is dominated, as Parsons points out, by two deep underlying convictions. The first of these is the fundamental variability of social institutions; the second, closely allied, is the inherent instability of social structures. In these days of rapid economic change, it should be evident that Weber's approach is a fruitful one, and it is a reasonable assumption that his name will find its way with greater and greater frequency into the literature of American scholarship. Professor Parsons has thus performed a signal service in making available in English the work of a man who heretofore has been known almost exclusively through *The Protestant Ethic and the Spirit of Capitalism.*—HILDEN GIBSON.

Without saying anything particularly new, Bertrand Russell, in the slim volume, *Philosophy and Politics* (Cambridge University Press, 1947, pp. 29), manages to put what he does say wittily and well. Originally

given as a lecture before the National Book League of Great Britain, the essay constitutes a brief defense of empirical approaches to politics and includes sharp attacks on Plato and Hegel. "That Plato's *Republic* should have been admired, on its political side" Russell contends, "is perhaps the most astonishing example of literary snobbery in all history." And he goes on to characterize the *Republic*, somewhat unjustly, it seems to me, as a "totalitarian tract." As for Hegel, his philosophy "is so odd that one would not have expected him to be able to get sane men to accept it, but he did." And Russell quips that Hegel set out his philosophy "with so much obscurity that people thought it must be profound." With great vigor, Russell defends Locke's empiricism. Locke's theory of knowledge and his social conceptions, he argues, constitute the basis for both modern science and liberal political philosophy; and it is only through an outlook like that of Locke that we can preserve the attitude which will avoid fanaticism in politics and disaster to civilization. As usual, Russell is delightful reading. But I have a feeling that he over-states, and hence weakens, the case against his philosophical opponents. Likewise, he can legitimately be charged with a somewhat uncritical attitude toward an English empiricism which, after all, is not without flaws.—MULFORD Q. SIBLEY.

As a summary of the wartime experience with integrated area curricula in Army training programs, *Area Studies in America Universities* (Washington: American Council on Education, 1947, pp. xl, 89, $1.00), by William Nelson Fenton, is excellent. It is clear, concise, valuable reading for committees and individuals engaged in establishing integrated curricula in the social sciences or integrated area programs. The volume is one of a series initiated by the Commission on the Implications of Armed Service Educational Programs, appointed by the American Council on Education. The Commission employed William Nelson Fenton and Elizabeth Bacon, both anthropologists, to make the area program study. They visited a broadly representative group of universities (twenty-seven in all) that provided civil affairs training programs and foreign area and language curricula. There they saw the programs in operation, talked with teachers and administrators, and visited classes. The summary of the survey, written by Mr. Fenton, offers a comparative sketch of the activities carried on at the several universities and "seeks to identify some of the salient possibilities and problems bound up with the future of area study." The programs and the problems of getting under way, staffing, integration, administration, instruction, and the like are competently presented. And many pertinent observations are included, e.g., that departmental jealousies stand in the way of integration; that it is difficult to adapt older professors, already committed to departments and disciplines, to the new

concepts involved in such programs; that men with field or practical experience are often inferior lecturers. Though such observations may be obvious to faculty members who have been concerned with curriculum revision in recent years, it is so easy and so convenient to overlook matters striking close to home that it is valuable to have them pointed up by an objective outsider. Our university curricula need revision, including provision for integration in the social sciences. It is disappointing, therefore, that Fenton's last chapter, "Implications For Future Area Study Programs," is the least satisfactory. Many of the implications noted in the earlier sections are not pulled together, and there is not sufficient consideration of the relation of the integrated program to adequate training in one of the established disciplines. One can argue, without committing oneself to "departmental nationalism," that training in the methodology and the acquisition of theoretic understanding in economics, political science, or one of the other disciplines is an important and arduous undertaking and that without such training familiarity with the descriptive material about an area may not produce useful results. Integrated programs can ignore this only at the peril of destroying their utility. The American Council on Education and its Commission, however, deserve praise for facilitating the publication of this volume.—E. M. KIRKPATRICK.

According to the author's preface, the primary purpose of Wilbur W. White's, *White's Political Dictionary* (World Publishing Co., 1947, pp 378, $3.50) is "to interpret the political world to the general reader," and the book is "not intended primarily for political scientists." Professor White none the less has provided the political scientist with a convenient reference volume which can be recommended for student use. The items, arranged alphabetically, comprise not only general terms, but specific legislative acts, slang expressions, and abbreviations. Words and phrases taken from a couple of pages include, for example, "honest graft," "Hoovercrat," "Hot oil," "hot potato," "house arrest," "H. R. 1776," and "Hundred Days." While attention is given to origins, sources and authority for data are not given. Terms in the fields of private law and economics have generally been excluded. While the political scientist might wish to argue over some of the definitions and the propriety of certain omissions, the volume seems well done in the light of the objective. The Charter of the United Nations and the Covenant of the League of Nations have been added as appendices.—WILLIAM O. FARBER.

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University of Illinois

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